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## **LG Electronics U.K. Ltd : Response to the Ofcom Small Screen Big Debate Future of Public Service Media Consultation**

March 2021

### **About LG Electronics**

1. Founded in 1958, LG Electronics (LGE) led Korea's electronics industry as the first producer of radios, TVs and other appliances. By 2009 LGE had become the second largest TV manufacturer in the world, a position it has maintained ever since.
2. The LG Electronics Home Entertainment Company is an industry leader in televisions, audio video systems, monitors, projectors and portable computers. The company is a recognised innovator in the industry for its leadership in OLED TVs which have revolutionised the premium TV category. LGE is committed to improving customers' lives with innovative home entertainment products led by category-leading OLED TVs and innovative LCD technologies including NanoCell, and most recently MiniLED TVs featuring artificial intelligence (AI) capabilities.
3. This response is made solely on behalf of LG Electronics U.K. Ltd (LG) a subsidiary of LGE. LG has also contributed to the techUK response and thus some common wording will be noted.

### **Background & Summary**

4. Not so long ago, all of Britain's television sets were manufactured in Britain. However global economics have changed and the last major brand to manufacture TVs in the UK closed their production facility here over a decade ago. These days virtually all TVs are manufactured abroad, mostly in Asia, for global and international markets, however the consumer has hugely benefited from this change.
5. The consumer buying price of televisions has consistently declined on a like for like inflation adjusted basis over the last 20 years, whilst in the same timeframe TVs have developed from large cumbersome CRT based boxes displaying Standard Definition pictures to paper thin, flat panel, internet connected, Ultra High Definition displays, showing more lifelike images and real life colours. This is largely driven by the economies of scale of global engineering and production.
6. As an example in the last couple of years LG Displays opened its next generation OLED panel production plant in Guangzhou, China, ushering in an era of producing 10 million large-size OLED panels a year<sup>1</sup>. This significant investment of between 3 and 4 billion dollars can only be justified at a global level. Consumers then benefit from having the highest quality products at affordable prices. LG Electronics has made similar investments

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<sup>1</sup> <http://www.lgdisplay.com/eng/prcenter/newsView?articleMgtNo=5206>



in other areas at the global level including in 2013 when it acquired webOS<sup>2</sup> and has subsequently further developed it for the global market across many product categories including refrigerators, watches and automotive software solutions. Again the consumer benefits from such a global level approach, however when individual markets or territories add to, or impose additional local conditions and restraints, this always results in increased costs, which ultimately have to be paid for by the end consumer.

7. In such an environment, and even though we have now left the EU, it must be recognised that the UK cannot operate as a separate and unique entity when setting legislation, regulation, technology standards and platform specifications which device manufacturers are then compelled to follow, as this risks driving up costs and slowing the rate of technology innovation and adoption, new model development and production, whilst issues specific to local markets are dealt with.
8. The primary way PSBs<sup>3</sup> can exist and compete in an expanding world of non-linear online content is by innovating and investing in content, not trying to load the regulatory dice against their competition, nor creating excessively controlling and demanding certification and compliance regimes. The current certification regime for devices to qualify for access to UK PSB online content remains the most complex in Europe, five times more onerous than comparable EU markets such as Italy<sup>4</sup>.
9. Rather than assume that the current market conditions are loaded against the PSBs, and that further regulation is necessary to help them compete, LG believes the opposite situation to be true. PSBs have increasingly demonstrated their ability to act as an uncontrolled and unregulated gatekeeper to their UK online content. If any further regulation is to be developed it needs to ensure that PSB online content is not unduly prevented from reaching consumers buying horizontal market products.
10. Inherently LG would much prefer the market to act satisfactorily without the need for regulation or interventions. However our current view is that the market is not capable of reaching such a mutually agreeable position on its own. We would be happy to consider and review other suggestions or instruments that could be adopted to arrive at a mutually agreeable situation however we perceive that some degree of legislation or regulation will be necessary to correctly and equitably define and frame the market for the future. At the forefront of this regime must be the needs and desires of the consumers, who have

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<sup>2</sup> <https://www8.hp.com/us/en/hp-news/press-release.html?id=1375489#.YEIx5Gj7RaR>

<sup>3</sup> In this document we interchangeably use the terms PSB and PSM. In many cases they can be deemed to be equivalent, however PSBs most usually refer to the current situation and PSMs to the future, in line with the consultation document.

<sup>4</sup> E.G. By comparison in 2019 for Italy we supplied 8 TVs to one single national certification process, In UK it was 40 TVs to 5 separate organisations with associated incremental costs and overheads.



increasingly expressed their appetite for multiple, new, sources of entertainment and content.

11. The AVMS-Directive has effectively paved the way for such legislation to be enacted, and it is clear that UK (and other EU) authorities intent to do so, however as with all regulation it will have to strike a careful balance between being too loose and subjective that it cannot be unambiguously implemented, or being overly prescriptive and constraining that it kills any further development, both of which risk consumer harm. Providing it is carefully written and pays sufficient attention to the important detail, an updated Communications Act and associated regulation could enable the market to better develop to meet consumers real needs.

### **Key Points**

- i. There is indeed an unbalanced power dynamic currently within the UK, disproportionately in favour of the PSBs. If further regulation is to be enacted it needs to re-balance this situation and provide a level playing field for all players and enable PSM content to be frictionlessly delivered to UK consumers.
- ii. The UK must return to the fully open horizontal market paradigm for devices whereby PSB on-demand, and in future linear live over IP content, cannot be denied to UK consumers, through denial of services to devices (black-listing) that have been manufactured to the appropriate global technical specifications.
- iii. It shall not be necessary for device manufacturers to pay any levies or fees to intermediary organisations, particularly those significantly owned by the PSBs, in order to be able to deliver PSB online core content to the UK Licence fee payer. This includes access to all relevant content, technology and metadata necessary to deliver features related to that content.
- iv. The key to PSB success in the online world is for increased investment in high quality UK content production and not diverting funds into proprietary PSB methods and approaches, technology specifications and compliance regimes. Denying access to a device that has the proven technical ability to deliver the PSB service is not in the best interests of the consumer.
- v. Must Offer – Must Carry, with a core regulated offering, is a potential way forwards, providing it is sufficiently well defined, balanced, includes all PSMs equally and not subject to any additional individual PSM, or platform, requirements, including commercial, technical or compliance terms.
- vi. Additional expanded offerings can be mutually agreed between PSMs and manufacturers, but no aspect of these can be mandatory, nor impact the core regulated proposal.
- vii. Prominence must be defined to be fair, reasonable and equitable to all parties and meet consumers real needs for access to all their available content.
- viii. Whether or not satisfactory prominence has been achieved can only be judged independently, potentially through a notification based approach that does not require any pre-approval from any PSM.



**1. Do you agree that a new regulatory framework for PSM delivery should support a more flexible 'service neutral' delivery approach that is more outcomes focused?**

12. LG has no strong views on where PSM content is accounted for, based on our understanding that this issue is mostly one for PSMs rather than CE manufacturers.
13. However, wherever the PSMs deliver their content, there must be minimal barriers to consumers and CE manufacturers being able to access that content. If PSMs choose to make more content available online it must be freely available to access with no additional conditions or commercial contracts. Subject to conformance to the regulatory regime, PSM content providers must not be allowed to blacklist technically conformant devices from receiving that content.
14. Universality has been a mantra for PSB content distribution for many years. Having chosen to deliver PSB content to the newer (global) platforms it must be reciprocally legitimate for CE manufacturers to make access to those services on similar terms to the PSBs own walled garden platforms. Many consumers have demonstrated that their preferred route to access UK PSB content is via these global applications, so it is equally valid that these also be equitably prominent and subject to "must be found", "audiences can find easily" and "amongst the primary content being presented to users".
15. To LG "more outcomes focused" means that ultimately it does not matter where the consumer actually views the PSM content. For Example, a viewing of PSM content via Amazon Prime holds exactly the same weight and value as the same content viewed via the Freeview platform.
16. There are increasing examples where the identical PSB content is made available on OTT platforms at higher technical quality than on the Freeview network, so consumers legitimately opt to watch the better quality OTT application version. (e.g. Good Omens, A BBC co-production, was available on Amazon Prime in '4K UHD, Surround Sound' at the same time the Freeview platform transmitted it in 'HD, Stereo only' on BBC2). As such the "outcome" of the viewing on the "global platform" can be considered to be of equal success to the PSB.
17. "Service Neutrality" equally requires manufacturers to make available and offer access to (PSM) content on equitably fair and reasonable terms that meet with consumers viewing preferences.

**2. Do you agree with our proposals for a clear accountability framework?**

18. LG does not disagree to this concept, but again view this as predominantly a PSM content provider only issue.
19. However LG has strong reservations concerning "PSM providers should be required to set out their plans for delivering PSM publicly, agree appropriate and clear metrics, and report on the outcomes they achieve" & "Ofcom would monitor delivery and hold the PSM providers to account, with powers for us to step in and set specific requirements as



necessary". This sounds like a similar approach to the BBC writing its own distribution policy – an approach that was previously adopted that LG deems to be a market failure, due to the continuously changing, non-transparent and subjective manner in which it has been interpreted and applied and its subsequent negative impact on the consumer.

20. Nevertheless if this is going to be the modus operandi moving forwards then reciprocally, in the interests of equitable fairness, manufacturers must similarly be able to "set out their plans for delivering prominence and reporting on how that has been achieved".

### **3. What do you think should be included in the PSM 'offer'?**

21. Clause 5.28 states "New rules designed to secure the availability of PSM would ensure audiences can access PSM content online and provide a greater degree of certainty for PSM providers, manufacturers and TV platforms regarding the terms under which PSM on-demand services are delivered to audiences. These could be in line with our recommendations for new prominence rules, applying to TV services and platforms used by a significant number of people as a main way of viewing TV." LG views that this clause is essentially the whole consultation purpose in a single statement. At the highest level LG agrees with this statement, however this is very dependent on what is actually defined and that any associated terms and conditions are equitable, transparent and FRAND to all parties.
22. Clause 4.10 introduces the "level playing field". The PSBs continuously protest that it is they who are fighting an uphill battle against the global SVOD players on unequal terms, however from LG's perspective this is viewed the other way round. In the UK the PSBs make it unnecessarily difficult and place unnecessary barriers in the way before they permit their applications and catch up content to be incorporated on a SmartTV platform, thus denying UK consumers access to PSB content. By comparison the so called global SVOD player requirements are fair, reasonable, clear and objective and can be implemented without unnecessary complications. The same is true for all other European conformance regimes where single, standards based, self-certification regimes are predominant.
23. Ideally LG would advocate a single regulatory regime that covers all PSBs across the whole of Europe and we call on Ofcom and DCMS to align as much as possible with EU, even though the UK has now officially left the EU. Doing so will keep manufacturing and implementation costs as low as possible, providing maximum value to UK consumers. It is a simple fact that TV manufacturing is a global industry that benefits from scale, so unique national requirements that cannot be applied globally will always add costs to be picked up by the local consumer.
24. LG notes that there have been suggestions to introduce a multi-tier regulatory regime to the UK, one for "commercial" PSMs and another for the BBC. However it would make absolutely no sense to formulate new legislation if it did not fully include the BBC, or allowed their self-authored Distribution Policy to overrule, or augment, such legislation.



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25. LG views that the self-authored BBC Distribution Policy approach is not fit for purpose and had a negative market impact. It is very subjectively written, open to variable and continuously changing interpretations. Its formulation ignored the vast majority of industry contributions and as such must be considered a non-consensual discriminatory approach to managing the market. Its application has significantly contributed to market disagreements, resulting in consumer harm when consumers have been denied access to catch up player content. If we adopt the above proposed "core regulated" offer it must apply identically to BBC as to any other PSM without any deviation, nor connection to any internal Policy documents.
26. LG would not agree to a new PSM framework (as a result of this consultation) that adds to, or simply complements, other existing frameworks to be operated in parallel. At the next opportunity the BBC Charter, Operating Framework rules and BBCs own internally generated Distribution Policies must be brought completely into line with all new primary legislation.
27. Existing agreements and policies must not be used to override or opt out of any generic new PSM framework and legislation. If this means that ultimately existing frameworks and charters have to ultimately be deprecated then that is a course that LG would support.

**28. A Core Regulated PSM regime – Must Carry Must Offer (MCMO)**

29. Clause 1.16 of the consultation document advocates the adoption of "must offer, must carry" based on the premise that "there is a real risk that PSBs may find it difficult to agree fair terms for their content and may not be available on certain TV platforms." This situation is certainly not true for LG's TV platforms<sup>5</sup>. We positively encourage all quality content onto our TVs and place minimal conditions on their integration. We positively encourage local PSB content providers to be part of this content offering to our consumers, we fully recognize the importance of local content to our customers and it would not be in our interests to make such PSB content to be difficult to access.
30. LG does not, and has never, charged PSBs to be made available on our SmartTVs, nor do we charge PSBs for the current exceptionally high level of prominence that we provide and nor do we have any intention to do so. It is conveniently forgotten that it was the PSBs themselves who introduced the concept of charges (or levies) for access to content in the PSB catch up market when Freeview publicly announced that they were to introduce such charges in the 2014-15 timeframe as part of their "offer" to CE manufacturers, so it is somewhat disingenuous for PSMs to now complain that they are at a potential risk of being charged for access in the future.

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<sup>5</sup> The inherent assumption here is that Smart TVs themselves are now considered platforms in their own right – which LG believes is valid – although to the best of our knowledge never having been formally defined as such.



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31. LG puts no other tangible barriers in the way for any PSB content to be made available on our SmartTVs. Any Terms and Conditions that apply are primarily there to ensure the technical integrity and operation of our platforms such that our customers received the optimal reliable and robust experience that they expect us to deliver, which we would trust are in line with PSBs expectations also.
32. The PSBs claim that it is increasingly difficult for them to be carried on "all major content distribution platforms" however from our perspective we view that all the barriers that are erected are done so by the PSBs themselves with their own unnecessary and additional Terms and Conditions and Contracts that they believe must be accepted by manufacturers without objection.
33. Concerning clause 5.26 there is an inference that terms required by one platform are likely to be ubiquitous across all platforms. However this is simply not true. Platforms have very different business models and approaches and it is not appropriate to generalise and apply equal arguments across all platforms. From our perspective, PSBs terms certainly are inflexible and frequently just simply not FRAND.
34. Clause 5.27 suggests that as a platform provider we "impede the PSB's ability to fulfil its remit" because "terms cannot be agreed between a PSB and a platform provider". Whilst it was true that terms could not be agreed in 2020 we object to the inference that this failure was as a result of LG's "global requirements". It has always been our intention to carry PSB's content and players – but not under the terms and conditions that we were being asked. Many disagreements were about T&Cs in the PSBs own commercial contracts that were simply unacceptable or impossible to deliver, and bore no relation to "global requirements". We agree that being denied access to PSB content was detrimental to the consumer experience but our platforms had been certified to be technically conformant for many months before services finally were allowed onto our platforms by the PSBs.
35. At the highest level there are potentially benefits from a MOMC regime in that it could enable the most seamless access and availability of PSB content to the UK consumer, but there would be several pre-requisites that would need to be covered in detail and agreed before we could agree to it as a workable solution.
36. LG would not accept a MOMC regime as defined in the PSB's pre-consultation document as we do not consider those suggestions to be fair and equitable and objectively defined and they would not result in a level playing field for all.
37. A pre-requisite for any MOMC regime to work would have to be that once its Terms and Conditions have been precisely determined and agreed (by Ofcom), these would then require no further contractual, commercial or any other additional terms between any of the parties involved – otherwise it simply would not be a tenable MOMC regime – it would just be an extension of the current world and all its associated problems. This is also what we understand to be the "regulated terms" in the PSBs pre-consultation proposal. The T&Cs of the MOMC regime would precisely define the content offerings to be supplied from the PSMs and the required baseline technologies to be supported by the manufacturers.



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38. **Core Offer:** LG must have assurance that any core regulated offer remains essentially equivalent to reasonable expectations of a valid PSB (catch up) service offering as currently appreciated and understood by the consumer. This would include a minimum period of all available catch up content, for which the PSMs have the legal rights to allow, probably at least a minimum period of the last six months of broadcast content. PSMs must guarantee availability of such content and not gradually shrink the PSM offer over time, nor move their "most desired" content to the "expanded" offering, thus making it subject to additional T&Cs.
39. It should also be noted that some influential industry commentators predict that that traditional linear broadcast TV "channels" will disappear and no longer exist in their current form within the next decade or so. The "core offer" must therefore be defined to take account of this or similar developments, such that it guarantees a continued meaningful PSM offer to the consumer, without all content becoming subject only to the "expanded offer" as defined below. The "core offering" conditions would thus also need to be true for future linear PSM TV services delivered over IP. If and when IP linear services do finally replace DVB-T/S/C broadcast services, they must be made freely available as part of the core offering to horizontal market devices.
40. For the avoidance of doubt LG does not agree to the concept of a core regulated "Commercial" PSM Offer, (i.e. emphasis on "commercial"), LG only agrees to an all-encompassing ALL-PSM core regulated offer.
41. LG also completely rejects any proposal that a core regulated offer should be constructed around further negotiated settlements, such as any PSM's "distribution policies". The regulatory regime should be explicitly clear enough such that it reasonably covers all the necessary requirements without being subject to any further bilateral negotiations or commercial terms. To do so would completely negate the value of the regulation and its rules and codes of practice, work against the interests of the consumer, add significant costs to ongoing product development and allow the current disputed, problematic practices and conditions to prevail.
42. A core regulated PSM offer should also be conformant to internationally agreed technical specifications without any further proprietary PSM private extensions or deviations. (Extensions and deviations would only apply to optional extended offerings). Technical compliance and certification regimes, required to access the core offer, must be limited to associated Test Suites accompanying such international standards and not be subject to any additional PSM technical checking or evaluation.
43. For far too long now the UK PSBs have unilaterally added technical requirements alongside their own specifications without any industry consultation and then required that such technology must be adopted, and (partially) financed, by the manufacturers, regardless as to whether or not manufacturers deem such features to be necessary, useful or wanted and that have often not been well adopted by consumers.



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44. The core regulated PSM offer must be strictly confined to international standards that have had ex-ante open industry consultation and consensus agreement. LG does not consider that unilateral technical specifications written within any local market or country and then ex-post submitted to SDOs for rubber stamping approval is an acceptable way to claim compliance to international specifications.
45. An updated Communications Act is very likely to be in service for at least a decade if not two. During this time we are almost certainly going to see a further increase in content being delivered over IP, including increased 24/7 PSM linear content in addition to catch up VoD. The PSMs cannot make access to such content dependent on a technology that is only available through a commercial partner such as Freeview. There needs to be ex-ante industry consensus on all the technology used and how access to such technology is openly made available to the horizontal market.
46. DVB-I and similar technologies such as 5G are currently in their early phases of development and implementation across Europe and LG is very concerned that the current UK PSBs appear to have some very restrictive views as to how such technology should be implemented in the UK. LG believes that these new technologies open up new and exciting opportunities to bring even more new and high quality content to benefit UK consumers, but such opportunities must not be strangled at birth by over restrictive market conditions that simply locks the industry into preserving and replicating the current modus-operandi.
47. LG does not want to prevent PSMs from innovating, but if they do so unilaterally without industry consensus, then all such features must be confined to the optional commercially negotiated "expanded offers" category. The PSMs cannot require any manufacturer to pay fees or make financial contributions to developing or implementing such features. If the cost of innovating and implementing a new feature is so high that manufacturers have to help contribute to its development, the feature probably is not that valuable or necessary at the outset. The cost-effectiveness of PSM innovation and development can only be part of their own internal financial risk measures and accounting processes.
48. In a similar vein, PSMs must not restrict industry innovation and nor should such industry originated innovation require "approval" from the PSMs.
49. **Expanded Offer:** By definition any further "expanded offer" could be subject to negotiation on all aspects, potentially including additional prominence, but nevertheless not affecting (the regulated) prominence of the core-regulated offering. Only expanded offers, above and beyond the core regulated offer, from PSMs would be subject to additional, negotiated commercial Terms and Conditions, to be mutually agreed bilaterally between PSMs and Platforms.
50. LG's expectation and interpretation of an Expanded Offer is that it would refer to value added features such as Add-Free versions of the core content. The core offering would not be diminished and remain 100% complete from a content perspective.



51. Further examples of features and items that would apply to "expanded offers" would include items that have considerable economic impact on the design and capability of the device being provided:-
52. A first example would be "targeted advertising". HbbTV's targeted advertising specifications have deliberately been designed to be an optional independent specification outside of the core HbbTV technical specification. This is because it requires additional not insignificant costs to the implementation of a device. In order to justify these additional costs, manufacturers need assurances that their costs can be recovered, most likely through a mutually agreeable commercial agreement.
53. Secondly, access to manufacturers' consumer usage data is a commercially negotiable element and therefore cannot be part of a core offering. OTT content providers inherently know the usage patterns of their own content on any platform. Additional data has an economic value that rightfully belongs to the platforms for their own discriminatory use.
54. Thirdly, LG also view that it is far too early in the development lifecycle to include voice integration within a core regulated requirement. Voice integration is still very much in its infancy and early implementation phase and although some manufacturers may find it technically possible to do so, this capability must only be subject to the expanded offer category.
55. Clause 5.29 states that "New rules for PSM availability would need to: a) provide clarity on what PSM providers must offer, and b) consider the terms on which PSM is made available". LG agrees to this philosophy but the ultimate details must be equitable and FRAND to all parties and truly reflect the needs of the modern consumer. Any Codes of Practice, Rules of Operation, etc. if required must be complete and unambiguously defined, based on mutual common cross industry understanding and interpretation. The details and the scope of "core" and "expanded" offers particularly should be agreed by further open consultation.

#### **4. What options do you think we should consider on the terms of PSM availability?**

##### **56. Prominence**

57. Clause 1.7 states that it is "harder for PSBs to reach and connect with them (audiences)". There is however no substantive evidence to conclude that consumers believe that it is hard to find PSB content. PSBs have benefited from significant prominence for a number of years on SmartTVs and still their viewing figures decline. As such "prominence" is not the real culprit here, the issue is significantly more to do with the quality and appeal of the content being provided. PSBs spend a significant amount of time blaming the technology and the manufacturers User Interfaces, but never consider that their content is increasingly not attractive enough to entice viewers to watch. Increasing prominence even further is not going to resolve the declining PSB viewing problem, you cannot force consumers to watch any specific content.



58. Consumers have demonstrated their willingness to pay for content, usually at very high editorial and technical quality. In recent years the PSB's competitors have considerably improved their offerings, more dynamically tapped in to a better understanding of consumers viewing habits, needs and desires and provided appropriate content to serve those needs. Once consumers have paid a subscription they then consider that content to be equally important and of equal status to any "free" content. Consumers therefore expect such content to be easily found and presented in an equally prominent and accessible position on their SmartTVs.
59. The PSBs primary focus should therefore be on delivering more relevant and appealing quality content to the viewing public. We recognize however that PSMs have a requirement and duty to provide a certain amount of niche audience content to meet their public servicing obligations and that such content should be readily found and accessed, but it is our experience that consumers do not have any difficulty finding such content when they want to watch it, no matter where it appears in the UI. We have never had any consumer complaints from Sports and Movie fans, not being able to find their desired content despite being listed considerably well away from the home pages of a UI.
60. The same can be said for PSB News Channels. Consumers don't expect to see them listed on the home pages, but they know where they are and have no difficulty finding and accessing them when they want to watch. There is no evidence to suggest that such services are difficult to find, even during the increased demand for trusted news during the coronavirus pandemic.
61. Clause 1.15 states "The new system should ensure public service media remains prominent so audiences can readily find it. There are now many more ways to choose what to watch with many people now accessing content via connected TVs." There is a subtle but important issue about the definition of "prominence". The dictionary definition of "Prominence" is "standing out so as to be seen easily; conspicuous; particularly noticeable". This does not mean "first and foremost".
62. Given its large degree of subjectivity, actual "Prominence" can only be arbitrated by a neutral entity, which in this case would ultimately most likely be Ofcom. The "notification" approach – proposed by Ofcom in their 2019 recommendations (6.41-6.44) could form the basis for a workable regime. Manufacturers would design their UIs according to the regulated guidelines (codes of conduct) and would notify this to be so to the arbitrator, if so requested. To be clear it would not be necessary to get pre-approval of a UI design from any PSB. The regulated guidelines would be sufficiently clear such that they could be applied to any reasonable UI design.
63. LG believe that a suitable definition of Prominence for the future legislation should be analogous to "reasonable conspicuous, easily discoverable, easy to access, amongst the primary content being presented to users", which does not necessarily equate to absolute primary position in any specific list or UI design. Nor should the requirement be for "significant" prominence or "more" prominent as is frequently demanded by some PSBs as this would not equate to our consumers' needs and expectations. Overall prominence



should be viewed and judged in terms of the reasonable expectations of a reasonable balanced consumer, not one that overtly favours one particular mind-set and the UI must be taken as a whole to determine whether or not sufficient prominence has been achieved – failure to implement on one single aspect does not necessarily imply overall non-conformance.

64. Regulated prominence requirements must be fair to all and objectively achievable. Recently we have witnessed unachievable PSM prominence requirements that included guessing what the consumer was really trying to search for based on insufficient data. Overall equitable prominence needs to be fair to the overall needs of the consumer who also increasingly and legitimately wants to access non-PSM content.
65. For the avoidance of doubt, prominence requirements must also only apply to the out-of-the-box condition of a device. Consumers must be free, if the device has such capabilities, to move, re-arrange and position services according to their own personal needs which may include removing the PSMs if they are not relevant to that consumer's needs.
66. LG's legitimate SmartTV business model is focused on making products for international and global markets. The physical aspects of all our TVs are identical across numerous international markets. Doing so enables us to keep costs to the consumer as low as possible whilst investing more in innovation in other areas to meet increasing consumer demands. As such, for example, we do not make any local variations to remote control design. Doing so would considerably increase the cost of such devices to the local customer and on balance this is what we understand our customers prefer. Manufacturers must not be unfairly penalized for keeping consumer device costs as low as possible.
67. We acknowledge that other manufacturers take a different view on remote controls but that is their commercial choice. For LG any regulated, core prominence requirements shall only apply to Visual (and Audio) user interfaces and not physical elements including remote controls. Manufacturers must be legitimately allowed to make economically sustainable global physical products. Implementations relating to physical aspects can only be subject to mutually agreed additional requirements – i.e. only as part of a non-mandatory expanded offer.
68. We note that the PSBs ask that they be fully consulted on developing Prominence guidelines. In the interests of balance and fairness LG asks that we and other CE manufacturers are also equally consulted.
69. Another consideration that the consultation must consider is the acknowledgement and acceptance that we no longer simply provide "traditional brown goods" to this market. In common with other CE manufacturers, LG has now increasingly become a "service provider", in our own right, providing services that also go beyond simple rendering of Audio & Video on Smart TVs. This is a necessary part of our business model, enabling us to compete more effectively in the global market in the face of severe competition from ultra-low cost device manufacturers, many of whom benefit from Government subsidies within their own countries. As such we must fairly be allowed to pursue such legitimate



business activities and this will naturally include using the real estate of our TVs to provide these services, including the advertising of such services to greater or lesser degrees.

70. This will inevitably mean that various parts and sections of our UIs will not be available for open access and availability. Providing that the UI as a whole meets the regulated (prominence) requirements, then this must be acknowledged as a legitimate practice for SmartTV manufacturers to pursue.
71. LG observes that the process of developing this potential new regulatory regime has already consumed over three years consideration and it could be another couple of years before a final conclusion is reached. This will replace existing legislation that is over seventeen years old. LG is looking for any new legislation to be stable and applicable for a number of years, ideally at least a decade. Long term regulatory stability is one of the most important elements that enables effective and efficient innovation for manufacturers. As such LG would strongly argue against regular and continuous (annual) reviews of any final regulations. A single review to tidy up any obvious anomalies may be acceptable.

#### **5. What are the options for future funding of PSM and are there lessons we can learn from other countries' approaches?**

72. LG does not have a strong view on which particular funding model would be appropriate, however it is often cited that the BBC has to be treated differently due to the unique way that it is funded. Technically this is true for virtually all European PSMs, each has its specific funding nuance, however there is little or no subsequent linkage between funding aspects at source and how (PSM) content services are ultimately delivered, implemented and regulated in the wider market. As such funding issues should be considered separately and orthogonally and for the scope of this consultation all PSM term and conditions must be treated equally.
73. LG rejects the notion that the BBC should be made a special case with special privileges over and above those of the other PSMs. There is little / no reasonable justification that this should be the case and ALL PSMs should be treated equally and the same legislative and legal regime should apply to all. All other EU countries have a single regime for all PSMs – where there is no such concept as a more favoured PSM.
74. Taking such a singular regulatory approach will considerably simplify the UK market environment and make it a much more efficient and effective place to operate, ensuring that the UK consumer remains at the forefront of technical capability and service delivery.

#### **6. What do you think about the opportunities for collaboration we have referred to? Are there other opportunities or barriers we haven't identified?**

75. Clauses 6.33 & 6.34 state that "viewers still find it challenging to navigate multiple different platforms to find PSB on-demand content" & "Audiences could benefit significantly if PSM content were to be made available through a combined service, distributed widely". At the highest level LG agrees to this as a concept, however it does not just apply to PSB content, it applies to all content, as expanded on below.



76. The Tivo "Video Trends Report" (2020)<sup>6</sup> found that 84.2% of survey respondents are interested in the ability to view, browse and search all available content from every available source – from broadcast television to subscription streaming services – unified in a single experience or interface".
77. So although it would be an improvement for PSBs to consolidate their offerings, a single unified, single sign on, PSB BVOD player would only be a partial sub-optimal solution. The most logical endpoint for resolving this issue is the TV itself and this better consumer focused solution relies on / needs better universal access to content provider metadata.
78. LG thus calls for requirements to make all core content metadata, from qualifying content providers, to be made freely and openly available to all device and UI manufacturers. Doing so would enable truly consumer friendly devices to be provided. This would replicate the equivalent situation that exists with core DTV SI metadata being freely available from the traditional broadcast networks.
79. Clause 1.19 suggests "Shared research and development". For the avoidance of doubt this cannot apply to R&D with CE companies. Intrinsically CE manufacturers keep their own R&D very private and do not share. The only shared activity we perform in this respect is the development of international standards and specifications such as DVB, HbbTV, ETSI, Cenelec etc. We certainly advocate that PSBs work to similar objectives of implementations of international standards rather than the local deviations and extensions that currently prevail.
80. For the avoidance of doubt this means the consensual ex-ante development of industry specifications and standards, not the ex-post application of unilaterally written specifications.
81. Shared R&D between the PSBs is a worthy notion, however in practice we do not believe it would achieve very much. The BBC are the only PSB that has significant R&D capability so a unified R&D proposition would only effectively be a not very efficient extension to the existing BBC capability. LG would prefer much greater communication and practical participation in industry wide forums rather than isolated PSM only arrangements. We call for the cessation of PSBs releasing their own private technical specifications and greater adherence to internationally agreed specifications.
82. We also note that the equivalent German PSB R&D organisation, the IRT, was abolished in 2020 due to lack of ongoing support from its parent PSB companies. This probably suggests that the German PSBs have decided to concentrate more on content production and leave technical R&D to industry.

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<sup>6</sup> <https://dm4.tivo.com/l/43592/2020-06-18/bmj596>



## **7. What are your views on the opportunities for new providers of PSM?**

83. LG welcomes all new and additional contributions to providing quality content to the consumer. However LG would not approve of such a situation being exploited by organisations effectively buying their way into the PSM regime in order to guarantee prominence on UIs and other associated privileges. Global organisations would probably find it relatively easy to fund and qualify as a PSM, so great care should be taken if this approach were to be adopted. By definition it would simply not be possible for UIs to provide prominence to multitudinous services. If more content providers do become "PSMs" then the associated rules on prominence would have to be consequentially relaxed.

## **84. Solutions**

85. Noting that whilst fully respecting Brexit as a manufacturer of pan European products LG is looking for concordance & harmony with other DVB markets, such that UK consumers are not disadvantaged compared to their European cousins. Fragmentation from EU/DVB markets will add costs for UK consumers.

86. UK's diverse demographic increasingly looks for diverse global content and expects it to be readily available. The UKs PSBs content should be equitably included with all other valued consumer content.

87. Prominence is by definition a very subjective matter, nor is it one-size-fits-all, and therefore only an "Independent and Neutral Arbitration Approach" can be accepted as being fair and reasonable to all parties. The leading protagonists and advocates of prominence cannot also be the judges as to whether or not prominence has been achieved.

88. Managing prominence will most likely imply increased responsibility for Ofcom who will need to provide Regulated Guidelines (probably "codes of conduct") that are sufficiently clear, implementable and fair and reasonable to all parties whilst meeting consumers' real needs. The guidelines should be very carefully balanced, not be overly subjective, such that they are open to wide degrees of interpretation, nor should they be so prescriptive that they prevent any further development or innovation as the market develops over the next decade or so. The guidelines will need to be complete and cover all the necessary aspects of a UI design (this may entail further consultation to ensure all aspects are covered correctly).

89. All issues, including prominence, should be adjudicated by Ofcom as a neutral and independent party. LG approves that the industry should adopt the "notification" approach, as Ofcom proposed in 2019. i.e. Manufacturers would build their devices / User Interfaces according to the guidelines, and notify this to be so, if requested by the arbitrator. There would be no requirement to get pre-approval of a UI design from any PSB. This would result in increased confidence for consumers, knowing that they could be sure that they would have access to all PSB content at the point of purchase as devices will include PSB catch-up players etc.



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90. Basic technical conformance, would be defined as compliance according to the relevant version of the DTG D-book and HbbTV specification, including the normal industry accepted sunrise period of 18 months to implement.
91. The relevant DTG and HbbTV Test Suite would be the only technical conformance requirement. There would be no requirement to conform to additional PSB tests / conformance regimes.
92. A "Must Offer / Must Carry" approach could be adopted for core PSB content with certain critical caveats, including:
- a. It would apply identically to all PSMs – there would be no exceptions or special cases for any individual PSM.
  - b. There would be no bilateral (commercial) contracts necessary to access any PSM core content, for both catch-up and linear IP delivered content.
  - c. Adherence to the agreed "Codes of Conduct" would be the only requirement.
  - d. The PSM core offering must be guaranteed to be equivalent to today's high quality PSB content services and endure over time, i.e. new / premium content categories could not be defined to move any such content into an "enhanced" only product category and thus making them subject to further commercial terms.
  - e. There would be no requirements for "pre-approvals" of manufacturers' devices or User Interfaces from any PSB.
  - f. A process would be agreed whereby disputes and issues could be raised to the independent arbitrator. Such processes must be appropriate and timely such that resolutions are achieved efficiently.
  - g. Enhanced / Expanded PSB Services could be offered – but optionally so. These would depend on mutually (value based) commercial agreements between the parties, but must not impact the core "Must Carry / Must Offer" products.
93. The new legislative regime must be as forward looking as possible and be flexible enough to accommodate changes, including a possible move to an all IP mode of content delivery, including DVB-I, 5G etc. whilst maintaining the core principles of such regulation. Care must be taken not to constrain new opportunities that will enhance the consumers viewing experiences.
94. The above would return the UK to a more horizontal market, where consumers would be guaranteed to get all the PSB/PSM services they expect at the point of purchase.

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