



Designation of Public Service Broadcaster Internet Programme Services

The methods Ofcom will apply when making our
designation decisions

Virgin Media O2 response

25th March 2025

Non-Confidential response

EXECUTIVE SUMMARY

Virgin Media O2 welcomes the opportunity to respond to Ofcom’s consultation regarding the designation of Public Service Broadcaster Internet Programme Services. As part of the wider assessment and consultation process Ofcom is undertaking, the extension of the existing prominence regime across designated Television Selection Services is a fundamental component and one which requires detailed engagement across industry.

Virgin Media O2 acknowledges the changing viewing habits of audiences. Although linear viewing is still an important way in which audiences consume content, especially in relation to Public Service Broadcasters (‘PSB’), an increasing amount of content is now accessed via VOD and Internet Programme Services (‘IPS’). Reflecting this evolution in changes to the prominence regime, such that it applies to online PSB services, requires careful and robust consideration of the scope of the services that will benefit from prominence and the criteria that must be met before that benefit can be realised. Fundamentally, it is vital that the principles of the ‘PSB compact’ and the accompanying prominence aspect that has prevailed, successfully, in the linear broadcasting environment for many years, are upheld. Deviation from these principles presents a tangible risk of distorting the competitive landscape of not only content provision/content production, but also of TV platforms.

The objective is set out clearly in the legislation: *“Clause 28, together with schedule 3, would ensure designated PSB services had prominence on major TV services not currently covered by the existing legislative framework...making public service content both available and easy to find across a range of online television platforms.”*¹

We explain our views further in the sections that follow.

Prominence Principles

The existing linear prominence regime is robust and provides clear rules that ensure linear PSBs are given the relevant prominence across regulated platforms, providing audiences with confidence that PSB content will continue to be easily discoverable and accessible. In exchange for such prominence, PSBs must continue to provide programming which educates, informs and entertains whilst also contributing towards their individual public service remit (‘PSR’). Replication of these principles in the online prominence regime is critical to maintaining the intent and ‘spirit’ of the PSB compact, and also to avoid distortion of well-functioning competitive markets.

Although elements of the content on PSBs’ linear channels may not be classified as PSR programming, the amount of non-PSB content is subject to controls in the PSB licences – something which is covered in Ofcom’s additional consultation regarding PSB ‘Statements of Programme Policy’ (‘SoPPs’)— and the existence of a blend of PSB/non-PSB content on PSB channels is generally accepted due to the nature of running a linear channel. We would expect to see a ‘lift and shift’ style approach to the new online prominence regime in this regard. We believe it is vital that safeguards are put in place to prevent PSBs from diluting the amount of PSB content available via their players, such that they move away from the generally accepted ‘blend’ that exists on linear channels. This is particularly important in the context of the inclusion of third party and/or paid for content within PSB players. Although much of what is proposed within the consultation appears sensible, we do

¹ [Media Bill: HL Bill 44 Of 2023-24](#)

believe more thought needs to be given to certain elements of the regime and how it may be exposed to exploitation, specifically regarding the inclusion of third-party and paid for content within PSBs' apps.

The three conditions set out by Ofcom in the consultation, that will be used to assess whether a PSB IPS meets the threshold to be designated, appear appropriate and sensible in the first instance.

As already mentioned, PSB apps are becoming more important to consumers as audiences consume content in different ways, whether this be watching linear content via the app, catching up on content they may have missed or consuming their desired content on-demand at a time that suits them. For audiences, the PSB app is simply an extension, and sometimes replication, of the linear service packaged in a way which allows consumption "on their terms." Therefore, if these services are being granted prominence in a similar manner to their linear counterparts, it is clear that the content held within them should make, as Ofcom states, a 'significant contribution' to the PSB's individual remit. We would expect the app service to replicate much of, if not all, content from linear channels, specifically content which the PSB has highlighted as contributing to the provision of wide ranging, high quality and diverse content and not simply be a vehicle for 'extras' and highly popular programming where reduced space is given to PSR content. Critically, PSBs' app services must not be a vehicle for PSBs to monetise non-PSB content – either their own or that of a third party. As much as they occupy the same space, the role of a PSB app is to provide PSR content that educates, informs and entertains and they should not simply be vehicles by which to compete with SVOD services. If this were to be the case, and the PSB apps were to be a significant step away from linear content, not only would this not fit with the remit of a PSB, but providing such services with the proposed prominence would be disproportionate and unfair and would undermine the essence of the prominence regime. With this in mind, we agree with the condition stated within the consultation that a PSB's app, and the content within it, must make a 'significant contribution' towards a PSB's individual public service remit in order to benefit from prominence. However, we would appreciate more clarity from Ofcom on how they will assess what constitutes a significant contribution. In order to avoid exploitation, a specific and objective assessment criterion is a must. As we have said previously, all processes linked to designation must be as open and transparent as possible.

Virgin Media O2 agrees in principle with the condition set out by Ofcom regarding the discoverability and promotion of PSR content within a designated IPS. It is vital that a PSB app doesn't simply host PSR content, but actively ensures this content is prominent, readily available and accessible to audiences and that apps are not curated in such a way that popular, or commercially lucrative content, is simply 'pushed to the front'. Again, this objective is clearly set out within the legislation: *"362AM (2) - The reference in subsection (1)(a) to a designated internet programme service being given an appropriate degree of prominence within a regulated television selection service includes a reference to an appropriate degree of prominence being given to public service remit content and any listed channel included in that designated internet programme service, so far as the prominence of that content or channel is capable of being affected by the operation of the regulated television selection service."*²

² [Media Act 2024](#)

In the consultation, Ofcom make reference to how linear channels often increase awareness of less popular PSR content by placing it next to highly popular programming in the schedule, allowing audiences to discover new and diverse content in this way. We acknowledge the benefit of this approach and believe it could be replicated within the user interface of any designated PSB app as long as this is applied carefully, resulting in a meaningful increase in the consumption of PSR content. We agree with the points made within the consultation regarding the aspects of public service media which are particularly important to audiences. It is vital that PSB's present content which is diverse, informative, educational and entertaining front and centre of any designated apps, allowing audiences to discover a wide range of content outside of what they may usually consume. It is also vitally important that news and current affairs programming is readily available and discoverable by audiences, providing a thorough, authoritative and well-informed view of local and national affairs, contributing to fair, reasonable and well-informed debate. Ofcom has rightly highlighted the ways in which it would expect PSB's to promote PSR content and we agree that this must appear in high-traffic areas, home pages and throughout the user interface. We also appreciate the reference to algorithmic personalisation and how, as much as this can provide a positive user experience, this should not be at the expense of enabling audiences to discover PSR content that they may not usually consume. Again, it is not the job of a designated PSB app to simply promote what is popular in an effort to compete with SVOD services.

Overall, we appreciate and agree with the proposal that, although non-PSR content may be included in a designated app, the promotion and discoverability of such content should not adversely affect the promotion and discoverability of PSR content. However, we strongly believe this is an area that requires much more detail and focus due to the risks involved in non-PSR content becoming available within a designated PSB app. As has already been mentioned, the 'benefit' of increased prominence comes with the requirement to provide diverse and wide ranging PSR content, contributing to the remit of the individual PSB. Although there are elements of PSB linear content that may not fall under the bracket of PSR content, this is an accepted part of the linear prominence regime and those channels which are afforded the highest prominence meet the PSR standards expected of them and no undue prominence is given to third party or paid for content. Although we do not yet know the intricacies of the online prominence regime, it could be assumed that it may work similar to the linear version with the four or five expected apps given equivalent prominence as their linear counterparts. This is where much more scrutiny around non-PSR content is needed in order to ensure the purpose of the prominence regime is not undermined and undue and unfair prominence given to content which is clearly outside the PSR remit.

Within the consultation, Ofcom references non-PSR content and how this may be paid for content, and how, in and of itself, the presence of such content would not disallow a PSB app from being designated and therefore reaping the benefits of the online prominence regime. However, no explanation is given as to what type of content this may be, nor how prolific it would be permitted to be – does Ofcom envisage PSB apps hosting one off purchases, such as newly released films, or does this view extend to the availability and presence of subscription services? We are aware that, currently, PSB apps contain paid for elements within them, such as allowing audiences to pay for an advert free tier of viewing, but it is unclear as to whether this is the paid for services Ofcom references. We would like to understand if Ofcom has considered the presence of third-party services being accessed via a PSB app, whether free or paid for, and how this may impact the new regime. If this has been considered, we believe more information needs to be provided to industry

ahead of any process decisions being finalised as we believe this to be a considerable issue. If for instance, a designated PSB app were to host paid for and/or third-party content that is already, or could be made available via other means on a designated TSS, would this be deemed appropriate as long as its promotion and discoverability did not impact the PSR content available on the app itself? If so, we believe this to be a dangerous precedent that could see the PSB app act as a form of Trojan Horse, allowing non-PSR content and services to receive undue and unfair prominence, something which directly conflicts with the purpose and intention of the prominence regime. We would expect these third-party services, accessed via a PSB app, to require some sort of promotion in order to justify their presence and, therefore, due and careful consideration needs to be given to how this impacts the discoverability and promotion of PSR content. This form of promotion may take place externally from the app, via means such as advertising, and we believe this must also be taken into consideration by Ofcom. It cannot simply restrict thoughts on promotion to the app itself. Furthermore, we would like to understand how Ofcom would look to measure the adverse effects on PSR content of promotion of non-PSR content. For example, if audiences were able to access a non-PSR subscription service via the PSB app which hosted one off, live events, such as a sporting fixture, would it be classified as adversely affecting PSR content if the homepage of the app were to advertise this event for a short period of time, i.e. the days and hours leading up to kick off? We would argue that this would be a clear misuse of a designated platform and be in opposition to the purpose and spirit of the prominence regime.

We would like to point out this usage of a PSB app to essentially distribute paid for third party content that would otherwise be available on designated TSS's would materially harm those platforms and Pay TV operators. Although we are well aware that, in certain circumstances PSB's have the ability to enter into commercial deals and partnerships, doing so in this way would distort the ability of platforms designated as TSS to compete for the hosting of content on a level playing field. In this scenario, PSBs would be offering content providers a level of prominence other platforms are unable to provide, due to the very nature of the prominence regime. They would be fundamentally benefitting from a regulatory process that would simultaneously be restricting TSS platforms' negotiating position. If Ofcom were to allow this sort of arrangement, we would hope there would be some provision that would allow designated TSS platforms and Pay TV operators to request a version of the PSB app that does not contain the third party, non-PSR content, therefore satisfying the prominence regime and ensuring the fundamental objective of the regime by providing available, prominent and easy access to true PSR content.

Overall, Virgin Media O2 supports the principles laid out within the consultation in regard to both the condition relating to the appropriateness of designation and the process by which PSBs will be required to apply for such status. However, we would look to Ofcom to provide more robust safeguarding conditions in order to protect both platforms and consumers from the concerns raised within this response.

Furthermore, we would request further clarity and context around the 'general control' point mentioned within the consultation, specifically in relation to third-party ownership or operation of a PSB app. We appreciate Ofcom is clear that the conditions of designation remain the same in this scenario, however, we feel it is important that any such relationship comes with the relevant transparency, if only to ensure the content platformed on an app meets the PSR remit of the overall PSB provider.

We acknowledge reference made within the consultation as to the ability of PSB providers to apply for designated status for an additional IPS, however we feel this has not yet been afforded the relevant analysis, specifically regarding the impact this may have on platforms user interfaces ('UI'). For example, under the current thinking laid out within the consultation, a PSB may look to launch children's/news/religious content apps, under the guise of them holding PSR content. If this were to happen, the app section of any UI would quickly become crowded, and we assume platforms would be required to provide all designated apps some manner of prominence. Not only would this severely hamper the commercial opportunities of designated TSS platforms, but it would also negatively impact audience experience. We are concerned this could be used strategically to 'bump' competing non-PSB apps further down the app screen/menu. Ofcom is clear in its purpose that the online prominence regime should allow PSB content to be easily discoverable and accessible – enforcing relevant prominence for multiple PSB apps will simply lead to an overcrowded space where audiences struggle to access the content they want.

We appreciate Ofcom providing a high-level overview of the process it plans to follow in relation to potential revocation of designated status. We agree that a review should always be undertaken when an app is undertaking major changes, and we also understand the position that not every change would warrant such a review.

Furthermore, it would be a positive step to understand if Ofcom plans to carry out regular monitoring or assessments of the designated IPS, outside of any reporting by the PSBs. We believe regular assessments and monitoring should be undertaken by Ofcom, particularly if apps were able to host third-party and/or paid for content as we point out above. Heavy advertising or promotion of this type of content may occur sporadically or be time sensitive and therefore PSBs' routine reporting may not capture issues that we feel may arise.

In conclusion, Virgin Media O2 is broadly supportive of the conditions laid out by Ofcom when assessing whether to designate an IPS and therefore bring them under the prominence regime. We believe it is fundamental that these services contribute significantly to the PSB public service remit and allow those consumers who wish to consume content in a non-traditional manner to do so whilst having access to a diverse range of content that informs, educates and entertains. It is clear that, rather than a method by which to compete with the challenges provided by SVOD services, PSB apps should be an extension of their linear services which provide for the needs of their audiences through the provision of diverse content across entertainment, news and current affairs amongst others. Therefore, we hold significant concerns that Ofcom is yet to fully address the issue regarding the placement of non-PSR content appearing on a designated PSB platform, especially third-party content which can be both free and paid for. Whilst we acknowledge the availability of some non-PSR content can and does appear on linear channels, this is not comparable to the potential issues that may arise if this was not to be tightly regulated in the online space. As suggested above, we believe there is serious scope for this regulation to simultaneously benefit non-PSR content providers, allowing them to take advantage of a Trojan Horse to prominence, and restrict the ability of TSS providers and Pay TV platforms to enter into commercial negotiation with third party content providers on a level playing field. Therefore, we urge Ofcom to take time to consider this issue in greater detail before making any further decisions.

Questions

Question 1: Do you agree with our proposed methods for determining whether the IPS makes, or is capable of making, a significant contribution to the PSB's individual public service remit?

Virgin Media O2 agrees that any designated IPS must make a significant contribution to the relevant PSB's individual public service remit. However, we would look to Ofcom to provide further clarity on how it will assess what is defined by a 'significant' contribution and that any such assessment should be open, fair and transparent.

Question 2: Do you agree with our proposed methods for determining whether public service remit content included in the IPS is readily discoverable and promoted by the service?

Virgin Media O2 agrees with the principles laid out within the consultation and that PSR content should be readily discoverable and promoted within a designated app. We also agree with the assertion that the availability of non-PSR content should not adversely impact this principle. However, we have significant concerns in relation to non-PSR content and its presence and availability within a designated app and we would appreciate further detail and assessment to be provided in this regard.

Question 3: Do you agree with our proposed methods for determining whether it is appropriate to designate an IPS?

Virgin Media O2 has no further comment at this time.

Question 4: Do you agree with our proposed process for IPS providers to apply for designation of an IPS?

Virgin Media O2 has no further comment at this time.

Question 5: Do you agree with our proposed methods for revocation of designation of an IPS?

Virgin Media O2 agrees with proposed methods of revocation highlighted within the consultation. However, we do believe there should be a regular monitoring programme put in place to ensure PSB apps are meeting the requirements laid out by the legislation and Ofcom.

Virgin Media O2

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