Non-Confidential

Virgin Media's Response to Ofcom Consultation

'EPG Accessibility - Proposed improvements to EPG accessibility for people with visual impairments'

Executive Summary

Virgin Media welcomes the opportunity to respond to Ofcom's Consultation on its proposed improvements to incorporate a wide range of accessibility features into the EPG for people with visual impairments ('the **Consultation'**).

Enabling inclusive digital products for all disabled customers is at the heart of Virgin Media's offering and we have made significant financial investment to bring about this goal. We consider it vitally important that across the industry, services and products are made suitable for all. As stated in our Call for Inputs response of September 2014 ('**CFI Response'**) we have made a range of adjustments to our products to make them more suitable for our disabled customers. We have responded to feedback from our customers and charities, such as our national charity partner Scope, which represent disabled end users to ensure our products and services are tailored to meet our customers' specific requirements.

We want everybody to enjoy their favourite shows on TV. We have continued investing in our products and services and have developed additional assistive functionality, training and information since 2014, examples of which are set out in Annex A. In addition, we have continued to invest in our current generation of software 'TiVo' and 'V6' which, based on UK Digital TV Usability and Accessibility Guidelines (v3.0, Dec 2014), meets **[✂]** of the criteria set.

Virgin Media is firmly committed to transforming the lives of disabled people, as demonstrated by our partnership with Scope and our goal to support 1m disabled people to get into and stay in work by the end of 2020. We have also been working to better understand and transform the experience for our disabled customers, including by ensuring the voice of disabled people is incorporated into our customer feedback for product development. We have found that working with a charity which covers a range of disabilities is the most effective way to meet our obligations under the EPG Code and other disability legislation to deliver substantive progress for our disabled customers.

Development of assistive technologies to date

In order to provide a competitive offering to all our customers (and without any regulatory requirements in place), Virgin Media has already developed the following solutions on its platform to enable all consumers to get the best out of their TV service:

- *Companion Virgin TV Go and Virgin TV Control apps:* These apps (which work on both iOS and Android devices) work alongside the TiVo and the V6 set top box ('**STB'**) and enables customers to access text-to-speech functionality on the EPG which incorporates voice over

description of subtitled and audio described content. The Virgin TV Control App navigates the linear EPG and catch-up TV and therefore is far more extensive than the proposed regulation as set out in the Consultation. Customers can also through the TV Control App playback subtitled and audio described assets on linear TV. The Virgin TV Go app will also operate with our next generation of software, Horizon and allows customers to watch content out of the home;

- *High contrast version of the EPG and mini guide*. This changes the colours to white text on a black background;
- *Designing the TiVo user interface to allow for ease of use to turn on/off audio description and subtitling*;
- *Development of audio cues on the EPG*: This increases ease of navigation of the TiVo services (these are sounds which emphasis actions and reactions of the remote control).

These solutions are just some of the innovative features that have been developed by Virgin Media to address the needs of all end users. For our new STB, Horizon, we are meeting with the **[✂]** to assess the accessibility of Horizon, our new software and identify areas where we can make improvements. Any improvements, including text to speech, will need to be considered as part of the wider product development roadmap and assessed for cost and feasibility of technical development.

Specifically, in relation to Ofcom's Consultation on improving the accessibility of Electronic Programme Guides ('**EPGs**'), we are looking at how we implement the proposed requirements around text to speech functionality, highlighting programmes with audio description and signing, magnification of text and high contrast displays as part of our forthcoming product development roadmap. We already provide some of this functionality on our existing software (TiVo and V6) but meeting mandated technical specifications will require significant investment from Virgin Media and our parent company, Liberty Global.

Whilst we welcome Ofcom's requirement that EPG providers use *'reasonable endeavours'* to include the specified accessibility features, as technological development is moving so fast in relation to devices and connected TVs, the concern is that the development of such functionality may become outdated even before launched to market. Our Virgin TV Control App is far more advanced, enabling more accessibility functionality and covering more of the user interface than the proposals under Consultation and we want to continue to invest in this functionality. The Virgin TV Control App can be used as a remote control which, along with our Virgin TV Go app, are compatible with the accessibility features of most common smart phones, including text to speech. In addition, the ioS technical specification offers reverse colours, magnifications, colour preferences and button shapes.

Ofcom's 2015 Strategic Review of Digital Communications found that more than 50% of UK TV homes were estimated to have a connected TV device; by 2017 this has increased to 75%[1]. If take-up of smart phones increases at the same rate, there will be near 100% penetration of these devices in the UK over the next few years, thereby addressing some of Ofcom's concerns regarding device take-up. We note, however, that access to smartphones will be lower for disabled customers and that visually impaired consumers are more likely to be older than non-disabled consumers and can face additional barriers to using mobile devices to access television programming.

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[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0032/108896/icmr-2017.pdf

For those customers, who cannot operate a more sophisticated device, there may be other ways to support those customers given the expense involved of integrating for all customer devices such functionality. **[✂]** We think this approach would provide an optimal solution thereby meeting the needs of all disabled customers - from those who are tech savvy to those who need more support. **[✂]**.

Virgin Media is very supportive of initiatives to improve the customer experience, particularly concerning the accessibility of our products and services. However, in light of the positive market-led developments in accessibility enhancements (which are nascent and have occurred organically through competition) over the last few years, Ofcom should not discount the flexibility it has previously provided industry to develop its own technical solutions and allow providers to compete to gain the custom of this important sector of the market. For example, Virgin Media is prioritising the development into our next generation of STB, Horizon, enabling customers to use voice search and commands such as 'tune to BBC 1', which will provide similar benefits to text-to-speech functionality.

Question 1 (Accessibility features)

Q1(a) - Do you agree that EPG providers should use reasonable endeavours to secure so far as practicable that their EPGs include options for users to use all or as many as possible of the following accessibility features: (a) 'text-to-speech', (b) 'filtering or highlighting', (c) 'magnification' and (d) 'high contrast' displays (i.e. with a contrast ratio of no less than 7:1)? If not, please explain why you do not agree giving reasons.

Q1(b) – Do you agree with the changes to the EPG Code that we propose to make to implement these proposals? If not, please explain why you do not agree giving reasons.

We welcome Ofcom's amendment following feedback from the CFI responses that the EPG Code should require EPG licensees to use '*reasonable endeavours to secure so far as practicable'* the new specified features and that Ofcom will consider on a case by case basis what is reasonably practicable. In Virgin Media's view, the standard for compliance to meet 'reasonable adjustments' adequately reflects the fact that there are significant costs and technical hurdles to implement the proposed EPG features.

A requirement for regulated providers to use 'reasonable endeavours' is a more manageable obligation than a requirement for providers to use 'best endeavours', particularly given that Virgin Media has increasingly less control over the exact specification of the technological development of its next generation of software (Horizon). **[✂]**. Similar to other device manufacturers, economies of scale are delivered when manufacturers can develop global products **[✂]**. It is not always possible for each jurisdiction to add their specific requirements when developing a pan-European set-top box, particularly where these requirements may differ across Europe. Ofcom's assertion that Virgin Media has '*effective control of the features of set-top boxes made for them by contract manufacturers*[2]*'* is not correct   **[✂]**. We suggest that Ofcom waits before publishing its final requirements for the EPG Code and reviews in detail any requirements coming out of the European

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[2] Paragraph 4.78, Consultation

Accessibility Act to ensure, for companies which operate across Europe, there is some parity in specific requirements.

It is also not possible, particularly where STBs are already in the market, for EPG licensees '*to use their commercial influence to get the new accessibility features included in TV receivers that have already been supplied to consumers[3]*'. **[✂]**.

Question 2 (Rolling out to all TV receivers) - Do you agree that the proposed features should be rolled out on all new models of TV receivers commencing development from when the changes to the EPG Code that we are proposing enter into force, and any subsequent models (using reasonable endeavours, so far as practicable)? If not, please explain why you do not agree giving reasons.

We note that the proposed changes to the EPG Code will apply to '*all TV receivers commencing development from when the proposed changes to the EPG Code are implemented, and any subsequent models[4]*'. If Ofcom decides to proceed with its plans, we consider it important that Ofcom defines clearly what it means for a TV receiver to be '*commencing development*', as this will potentially impact receivers being developed in the next few months (assuming Ofcom issues a final statement in Spring 2018).

Development of a device or new product can take years from initial discussions to product launch and therefore it is difficult to pinpoint when product development commences. In keeping with the spirit of the EPG Code, Ofcom should be looking over a number of years if there has been progress on accessibility in the round rather than looking at a particular point in time and overly focussing on the start date of a product's development.

We consider that to make this requirement practicable for industry, the definition of a TV receiver 'commencing development' should only encompass the launch of new products into the market and specifically exclude incremental software upgrades to existing products already in the market.

Question 3 (Reporting requirement) - Do you agree with our revised proposal to retain and amend paragraph 10 of the current EPG Code, which requires EPG licensees to produce an annual statement regarding accessibility? If not, please explain why you do not agree giving reasons.

Whilst Virgin Media supports the idea that EPG providers produce an annual EPG Report to explain compliance with the EPG Code, many of the details relating to technical development and milestones to explain our approach will be confidential and not disclosable to consumers. This may therefore underestimate the ongoing work we are investing into making our products and services accessible.

Question 4 (Further changes) - Do you agree with the changes that we propose to make to paragraphs 7, 11 and 13 of the current EPG Code to simplify the Code? If not, please explain why you do not agree giving reasons.

Paragraph 7 – We fully support Ofcom's changes to the Code to ensure that the needs of disabled people become an integral part of of planning for future of EPGs. As stated above, Virgin Media has

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[3] Para 4.88, Consultation
[4] Para 1.8, Consultation

a national partnership with Scope and we propose to continue to liaise with them to advise us on how to improve the customer experience for all disabled customers.

Paragraph 11 – We consider that it is practicable for EPG providers to indicate where programmes are accompanied by access services using the standard acronyms ('S', 'SL' and 'AD'). However, we have concerns about Ofcom removing the caveat 'where practicable' as platforms who provide EPG services are reliant entirely on broadcasters and content providers supplying the correct metadata. Without accurate metadata it is impossible to accurately tag programmes.

Paragraph 13 – We agree with Ofcom's proposal to keep the wording which requires EPG providers to work with broadcasters, platform providers and disability groups to publicise the information and facilities available on EPGs to assist disabled people but remove the requirement for this to be via 'publications used by disabled people'. We consider the most effective way to engage our disabled customer base about all accessibility enhancements (not just in relation to the EPG) is through multiple channels including our website and training customer facing agents, retail staff and field engineers.

Additional points: Parity in the market

The last 10 years have seen rapid technological changes which have created new viewing habits and the production of new content by the commercial market. Television is no longer just a linear broadcast stream but instead encompasses a far broader set of delivery technologies (IPTV, cable, satellite, DTT), platforms, and more content than previously envisaged. Broadband has enabled the convergence between TV, personal computers and portable devices. Smartphones have now overtaken laptops as the device internet users say is the most important to them for connecting to the internet; a third of adults also now have access to 4G[5]. Online TV services have also grown with Netflix having more than 5m UK customers[6]. As Ofcom acknowledges, '*OTT providers are competing with traditional providers for service revenues[7]*'.

We note that the Consultation on accessibility features currently available in the market[8] focusses on STBs and frames the improvements required in terms of physical receivers. We consider that Ofcom has also to factor into its accessibility roadmap technological developments which will likely take place across the industry as providers move away from a traditional STB to IP delivery where there is no traditional 'receiver'. Players such as Now TV and Amazon Fire TV Stick are already delivering content via the cloud. This is vital to ensure that there is parity and fairness between traditional players and OTT players. Currently, the proposals in the Consultation seem to impact only Sky, Virgin, YouView, Freeview, BT, EE and TalkTalk. Virgin Media's view is that whether a company is required to offer accessible functionality should not be based on whether the linear EPG is delivered over IP or via a STB. Ofcom should also consider whether to bring into scope in its EPG Code services such as the BBC iPlayer, Amazon and Now TV all of whom provide linear TV over IP.

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[5] In 2015, 33% of consumers chose their smartphone and 30% their laptop as most important to connect to the internet (this compared in 2014 to 23% and 40% respectively). *Ofcom's 2015 Communications Market Review*, August 2015, http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/CMR_UK_2015.pdf
[6] https://www.theguardian.com/media/2016/mar/22/netflix-amazon-sky-uk-subscribers-streaming
[7] Para 4.76, Ofcom Strategic Review 2015
[8] Figure 1, Consultation

Annex A – Examples of Key VM accessibility activities

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