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| Title: Amendments to the Communications Act 2003 (Electronic Programme Guides) IA No: Lead department or agency: DCMS Other departments or agencies: | Impact Assessment (IA) |
| | Date: 28/06/2013 |
| | Stage: Development/Options |
| | Source of intervention: Domestic |
| | Type of measure: Primary and Secondary Legislation |
| Contact for enquiries: Oscar Tapp Scotting 02072112031 | |

Summary: Intervention and Options **RPC Opinion:** RPC Opinion Status

| Cost of Preferred (or more likely) Option | | | |
|---|----------------------------|--|---|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Measure qualifies as One-Out? |
| £159m | -£38m | £3.7 | YES IN |

What is the problem under consideration? Why is government intervention necessary?
 Public Service Broadcasters (PSBs) deliver high quality, UK-originated content such as news and content that represents and reflects the regions and nations. We think this would be undersupplied in an unrestricted broadcasting market, as services would focus on commissioning programmes with maximum generic appeal. At present, the PSB content is easy to discover and access because it features prominently in Electronic Programme Guides: the TV listing services which signpost consumers to content. This in turn helps commercial PSBs to attract the advertising revenue which supports the production of such programmes. PSB prominence is ensured by regulation of Electronic Programme Guide (EPG) services in Sections 310 and 311 of the Communications Act 2003. However, this regulation only covers listings of certain standard definition, linear services. With the arrival of high-definition, on-demand and catch-up services, and the emergence of more interactive and varied TV menus we are concerned about the regulations becoming obsolete. Government action is therefore required to maintain PSB prominence.

What are the policy objectives and the intended effects?
 The proposal is to ensure that the PSBs retain prominence on EPGs by updating the existing regime to reflect technological developments and to make it flexible to adapt to future changes. The detailed mechanisms for achieving this will be subject to detailed consultation prior to a firm policy proposal being implemented which will be accompanied by a separate Impact Assessment. Protecting this discoverability will promote consumption of public service content and support the high level of investment in high-quality UK and European originated content that PSBs are required to provide, and therefore the continued growth of the independent sector and the wider industry.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Option 1) Consult on how legislation should be amended to maintain the prominence of PSB and therefore the wider public policy objectives including investment in content.
 Option 2) Do nothing: As new EPG-like services emerge which are not caught within current regulations, the discoverability of PSB content may reduce. This will mean less viewers will access the content, reducing the return for PSBs and therefore reducing their capacity to invest in content and the creative industries.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: April/2018

| | | | | | |
|--|---------------------|-----------------------|-----------------------|---------------------------|---------------------|
| Does implementation go beyond minimum EU requirements? | | | Yes | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | Micro Yes | < 20 Yes | Small Yes | Medium Yes | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: n/a | Non-traded: n/a | |

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Preferred Option: Amend EPG Prominence regime.

FULL ECONOMIC ASSESSMENT

| | | | | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|----------------|--------------------|
| Price Base Year 2011 | PV Base Year 2015 | Time Period Years 11 | Net Benefit (Present Value (PV)) (£m) | | |
| | | | Low: Optional | High: Optional | Best Estimate: 159 |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--|---|-------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 38 | 3.7 | 38 |

Description and scale of key monetised costs by 'main affected groups'

The cost to EPG providers that would otherwise be able to sell prominent slots on their platform.

Other key non-monetised costs by 'main affected groups'

The cost of adapting to new regulation which is anticipated to be minimal as prominence should be anticipated during the development of the EPG. PSBs currently attain prominence across platforms.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | 198 | 18 | 198 |

Description and scale of key monetised benefits by 'main affected groups'

The benefits are the loss in UK and European originated and independent content investment avoided by this policy. Commercial PSB investment in particular is influenced as their ability to generate revenues is reduced with a loss in prominence. See section on rationale for intervention for more details.

Other key non-monetised benefits by 'main affected groups'

The benefits of having high quality public service content such as local news, children's programming and content that represents the regions and nations that meets audience expectations.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

It is assumed that there is a 0.3 probability of a loss in prominence in 2025. This probability increases up to this level over the time period due to the gradual take up of new technologies.

BUSINESS ASSESSMENT (Option 1)

| | | |
|---|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: 3.7 | In scope of OIOO? | Measure qualifies as |
| Costs: 3.7 | Yes | IN |
| Benefits: 0 | | |
| Net: 3.7 | | |

Background

The benefits of Public Service Broadcasters

Universal access to high quality content is regarded as an important cultural benefit. However it is a benefit which, for certain markets, is likely to be undersupplied by an unrestricted broadcasting market. Hence, high quality TV broadcasting is a merit good and Public Service Broadcasters (PSBs) play an important role in the production and universal provision of such content. Consumers may not take into account either the private or wider public benefits of the merit good and hence will tend to under-consume it. As a consequence, some element of Government provision of the good or service may be required.

PSBs are regarded as a merit good. Ofcom defines PSB purposes as:

- *Informing our understanding of the world* - To inform ourselves and others to increase our understanding of the world through news, information and analysis of current events and ideas.
- *Stimulating our knowledge and learning*- To stimulate our interest in and knowledge of arts, science, history and other topics, through content that is accessible and can encourage informal learning.
- *Reflecting the UK cultural identity*- To reflect and strengthen our cultural identity through original programming at UK, national and regional level; on occasion bringing audiences together for shared experiences.
- *Representing diversity and alternative viewpoints*- To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere.

There are five PSB TV channels (BBC 1 and 2, ITV, Channel 4 and Channel 5). Together, they share the majority of all TV viewing in the UK as shown in Table 1.

Table 1: Share of all viewing for PSBs Q4 2012

| Channel | Share of viewing (%) | Other PSB channels viewing (%) |
|-----------------------|----------------------|--------------------------------|
| BBC1 | 20.6 | 5.7(1) |
| BBC2 | 6.17 | |
| ITV | 14.47 | 7.63(2) |
| Channel 4/S4C (Wales) | 5.37 (C4 only) | 6.2(3) |
| Channel 5 | 4.03 | 1.83(4) |
| Total | | 72% |

Source: BARB.

Notes:

1. BBC3, BBC4, BBC HD, BBC News, BBC Parliament, CBBC, Cbeebies.
2. ITV2, ITV3, ITV4, ITV 1+1, ITV HD, ITV 2+1, ITV 3+1, ITV 4+1, CITV.
3. 4+1, 4Music, 4seven, E4, E4+1, Film 4, Film 4+1, More 4, More 4+1.
4. 5+1, 5*, 5* +1, 5 USA, 5 USA +1.

In addition, to the five PSB TV channels, local television services were designated as public service channels in 2011. The first local TV channels are due to launch at the end of 2013.

PSBs current situation

PSBs are licensed to use electromagnetic spectrum by Ofcom for transmission of the digital terrestrial television network (known also as Freeview) and are required to distribute services on other platforms such as cable and satellite. In return, they are subject to a number of licence conditions which ensure that they provide certain

services (e.g. news, regional news and other services and current affairs programmes) and obtain a minimum proportion of their programming from independent producers within the UK.

Viewers use Electronic Programme Guides (EPGs) to find programmes. The more prominently a channel is placed on an EPG the more likely that a given viewer will settle on that channel, due to their higher level of discoverability and ease of access. Consequently, under Sections 310 and 311 of the Communications Act 2003, PSBs are accorded appropriate degrees of prominence on EPGs. At present, Ofcom secures this prominence by making it a condition of the licence for an EPG service provider. In practice this means that the 5 main PSB channels occupy the first 5 slots on the EPG reflecting their historical position predating the establishment of digital television. As a result PSB content is readily accessible to consumers.

Ofcom has commissioned a report into the effect of prominence on viewership (An Analysis of the Audience Impact of Page One EPG Prominence, 2010). The results are summarised in Table 2. The report finds significant evidence to display the negative impact on viewing a loss in prominence can have. “E4 moving down 14 channel ranks on the Freeview EPG, putting it just ahead of E4+1. Following this move E4 lost 0.733 Share points (a drop of 25%)”

Table 2: Impact of prominence on viewing patterns

| Evidence in support of an EPG Change Viewing impact | Type of EPG Move | No of Examples | Final Viewing Impact Attributable to EPG Change |
|---|--------------------|----------------|---|
| Highly Significant | Loss of Prominence | 11 | Performance losses of between 20% and 46% |
| | Gain in Prominence | 7 | Performance gains of between 22% and 119% |
| Significant | Loss of Prominence | 1 | Performance loss of around 36% |
| | Gain in Prominence | 2 | Performance gains of between 28% and 114% |

Source: Attentional report for Ofcom 2010 “An analysis of audience impact of page one EPG prominence”

Technologia (“The Value and Optimal Management of Channel Position and Prominence on Electronic Programme Guides”, DCMS, 2012) estimated that a top entertainment position on EPG is likely to be valued on the secondary market at £20 million.

Problem under Consideration

Regulation of Electronic Programme Guide (EPG) services is covered by Sections 310 and 311 of the Communications Act 2003. However, this regulation only covers listings of certain standard definition, linear services reflecting the TV provision available at the time. With the arrival of high-definition (2005 on Cable and 2006 on Satellite), on-demand and catch-up services (limited services introduced in 1999 first services on cable in 2005), and the emergence of more interactive and varied TV menus we are concerned about the regulations becoming obsolete and PSB content becoming less viable as a result. For example, PSB HD and on-demand services are not included within the regulations, nor are the wider PSB portfolio channels, some of which, such as children’s or local channels, we may want to consider including. The rules also fail to take account of the prominence needs of new local TV services. In addition the rules on prominence are difficult to apply as the range of tailored TV menus increases as EPG provides create different visual interfaces, giving the viewer increasingly interactive, non-numerical content displays and access to content which can be listed in different sub-categories

or broken down into programme listings.

As a result of this, without intervention the regulations will over time become increasingly irrelevant. As such, those services providing programme listings and access to content may, for financial reasons, choose to promote other TV ahead of PSB content. This would lead to PSB content being less discoverable and therefore less frequently watched than at present. As set out in the benefits section we estimate that the prominence reduction will be around 30% over the next decade. This is a substantial reduction in prominence, and as such we would expect the change to reflect other recent losses in prominence with a negative impact on viewing figures of 20-40%. This reduction in viewing figures will not only reduce the prevalence of a merit good, but will also have a knock on effect which, particularly for commercial PSBs, could be severe. This is because they will have fewer resources to devote to meeting their quotas for Public Service content, in areas such as children's programming, regional news and programming and independent production if their advertising and sponsorship revenues come under downward pressure because of declining audiences. As a result, without intervention the current prominence regime may no longer deliver its public policy aims.

Rationale for Intervention and policy outcomes

The prominence of Public Service Broadcast supports two key policy objectives:

1. The production of programmes that deliver cultural and social benefits might otherwise be undersupplied e.g. regional and local news and children's programming
2. Investment in UK content and therefore the continued growth of the independent sector and the wider industry, with significant benefits for the wider UK economy

High-quality Public Service Broadcasting, including national and local news, children's programmes, drama and current affairs programming delivers social and cultural benefits, in addition to entertainment. The current requirements to provide these goods derive from the Communications Act 2003 and are set out in the Broadcasting Code. The Government believes that provision of such services is an important merit good. This remains true through all the changes to broadcasting services that are in prospect and for new PSB content such as programme developed for local television. For this reason, it is essential that PSB content continues to be readily discoverable and accessible in the face of developments in the market.

The Government also believes that EPGs play a role in helping to maintain the current level of investment in UK originated content by ensuring the appropriate promotion and discoverability of PSB content. Under Section 263 of the Communications Act Ofcom is obliged to include conditions in the licences of commercial PSBs to comply with obligations for independent, regional and original production. The BBC is similarly required to meet such obligations in the agreement between the BBC and the Government. This supports the virtuous circle of content investment and the wider industry. Retaining high viewing figures allows commercial PSBs to justify continued investment in UK content.

There are, therefore, two desired outcomes:

- Continued discoverability for PSB content; and
- Continued investment in UK and European including independent content production.

Description of options considered

Option 1) Preferred Option: Consult on amending the Communications Act 2003 to redefine what constitutes an EPG and to ensure the relevance of prominence requirements:

The Government is proposing to consult on redefining an EPG service so that it is brought up to date with recent developments in TV technology and to give it the flexibility to adapt to future technological developments. We believe that this will likely involve a number of changes to the current EPG regulatory regime set out in the Communications Act 2003 including:

- i. Redefining an EPG in primary legislation
- ii. Introducing an Authorisation regime to replace the EPG licensing regime in line with European regulations
- iii. Including on-Demand and HD services in the list of Public Service Channels.

We will provide a developed proposal and accompanying Impact Assessment following the consultation.

Option 2) Do nothing:

This causes the risk of the PSBs losing prominence hence losing viewership which could reduce their ability to invest in content. This loss will occur due to the change in the way in which consumers will browse and discover television. This is the base case which the preferred option is compared to.

Monetised and non-monetised costs and benefits of each option:

This proposal will replace the existing licence-based EPG system with one based on general authorisation, which reduces burdens compared to a licensing system. The new regime will mean that any EPG services will cover authorised content providers and will be required to give prominence among them to PSB content. The new regime will be capable of adjustment through secondary legislation. When such change is contemplated it will be necessary to estimate the impacts of the changes being made. The nature and size of those impacts will depend upon the circumstances that obtain at the time of implementation. Hence, it is difficult to provide accurate estimates of the costs and benefits of this policy at present.

Nevertheless, it has been possible to provide an impression of the scale of impacts resulting from to the policy.

Option 1) Preferred Option

Summary Benefits and Costs

| | Value (£ million) |
|---|--------------------------|
| Benefits | 198 |
| Social benefits received from widely viewed high quality television | + |
| Maintaining current investment in UK content from commercial PSBs | 198 |
| Costs | 38 |
| Cost of EPG providers adapting to new regulations | - |
| Loss of revenue for EPG retailers | 38 |

Price base = 2011, NPV Base=2012, Policy implemented 2015 for benefits shown for 11 years.

Benefits:

PSBs provide substantial cultural benefits which cannot be readily estimated. However, they include children’s programming, the universal provision of high quality national and local news and current affairs programmes and programming that reflects the nations and regions including minority language programming (such as S4C).

The importance to UK produced content of according prominence to PSBs can, however, be estimated by calculating the benefits of safeguarding against the risk of a loss in prominence. This is the result of three factors:

- a) The probability of a loss in prominence and viewership;
- b) The proportion by which investment will fall when there is a lower level in prominence; and
- c) The time period in which these benefits will accrue.

Enders analysis “Estimate that at least 50% of homes have the means to connect their TV sets today and assume this will rise to c. 80% by 2020” This is not for the full time period of our policy but if we extrapolate there is approximately a 45% increase in the level of connected viewing through the television. It is assumed that this will correlate to the risk of a loss in prominence. This is due to the fact that connected devices are increasingly providing new ways of navigating television programmes which fall outside of the current regime for ensuring PSB prominence. As such, the current regulations will offer no prominence guarantees to PSBs in this area. It is likely that, either to promote their own content, or to monetise prominence, services would choose not to promote PSB content unless PSB met the full market cost. As such, with more people watching TV on connected devices, it is increasingly likely that the first screen they look to for accessing TV could be without any PSB content or a resulting financial impact on PSB’s who would have to acquire prominence rights through the market. However, there are at least three effects that are likely to reduce this 45% figure.

Firstly, PSB’s may not lose prominence and EPG firms may choose to keep them on their front page due to the high quality content they produce and to ensure their customers can continue to find this content rather than receiving payment for the prominent slot. Secondly, not all people will use their connected television to watch TV in that manner and linear viewing is likely to remain the most favoured way of viewing in the “foreseeable” future (Ofcom). Thirdly, the extrapolation of connected television users past 2020 is ambitious and forecasts after that date depend on future developments of services such as ultra-high definition TV (4 times more resolution than HD) that are not in the market. It is more likely that the number of people who have access to connected television sets would slow in growth as the market becomes saturated.

Taking these factors into consideration it is then judged that the risk of losing prominence over this whole time period is 30% rather than the 45% obtained by the extrapolation of current trends. This would happen gradually and only reach this level in 2025. It is modelled so that it is 0% risk in 2015 and increases up to 30% by 2025 in 3% increments. This has been modelled to increase over time so that this risk and hence the impact becomes larger as time goes on to reflect the gradual take up of consumers of the new technology.

Commercial PSBs rely on advertising and sponsorship for their revenue. With less prominence viewership would decrease, this would then cause their advertising and sponsorship revenues to fall. With less revenue PSBs will have less money to invest in general and on content in particular. However, we have no reason to suppose that the adverse impact on available investment funds will bear disproportionately heavily on commissioning of UK content. We, therefore, assume investment in UK originated content by commercial PSBs will fall at the same proportion as their revenue. Last year viewing for ITV fell by 3% and their advertising revenues fell by 1% (ITV annual report 2012). Due to the impact on viewing of losing prominence, displayed in table 2 above, it is assumed that investment will fall by 10% if commercial PSBs lost prominence on new EPG systems.

In summary with the increased use of connected televisions prominence for PSBs on emerging EPGs would fall. With a fall in prominence comes a decrease in viewing, because PSBs are less discoverable. This drop in viewing means that a firm receives lower advertising and sponsorship revenue. Less revenue negatively impacts a firm’s likelihood to invest in UK originated content.

In 2011, commercial PSB procurement of first run, UK content was £1.2 billion¹.

It is, therefore, possible to compute the likelihood of a 10% reduction in content procurement over the period to 2025 as follows:

$$\text{Maintaining current investment of PSB per year} = \text{£1.2bn} \times (\text{probability of prominence loss}) \times 0.1$$

This suggests that the policy of protecting PSB prominence is worth £198 million to UK content between 2015-25. This will benefit UK content producers. However, it has not been possible to estimate the likely effect on UK GDP.

Costs:

There will be one off transitional costs of adapting to new regulations which we anticipate will be small. These will be met by providers of EPG services.

It is likely that, compared to a free market in EPG slots, granting prominence to PSBs incurs a significant welfare loss. Firms selling prominent slots on EPGs would lose out on potential profits. That these costs are likely to be substantial is suggested by the prices paid at auction for prominent slots when they do become available. Technologia has estimated the value of the slots on top of the entertainment genre of EPG to non-PSB broadcasters. The cost of providing one slot for BBC and one slot for Channel 4 (the government owned PSBs) is approximately £38m. This would be a one off cost of securing prominence for an on-demand service and assumes that this prominence is not already provided. Channel 5 and ITV would be expected to bear similar costs, but are not considered in this calculation because this would be a transfer between businesses rather than an extra cost to the business sector.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)

To provide estimates of social and cultural costs and benefits would involve a contingent valuation exercise and complicated modelling. It would, in any case, only refer to a hypothetical situation in the future. As a consequence, the results would be highly speculative. Conducting such an exercise would be disproportionate.

Risks and assumptions

The do nothing option is the base case and net costs and benefits are equal to zero. This means that the cost of doing nothing (loss of investment) is saved if the policy is implemented, hence the benefits for the preferred option is the money saved.

If nothing is done and PSBs lost their prominence it is estimated that the impact on investment will be different for the BBC compared to the other PSBs. This is because the BBC will continue to have sole access to the Licence Fee.

Technologia has estimated how much would be paid for a top EPG slot. This is a willingness to pay estimate and it is assumed it occurs once within a period of 11 years.

BBC spends 91.5% of its total programming budget on UK original content. Commercial PSBs spend 81%. Non-PSB channels do commission some UK content. However, they do not spend as high a percentage on UK- originated content and those that come close to this level are skewed by the level of investment in sport rights. The higher propensity to spend on UK content among PSBs has led us to assume that such investment would be reduced overall if PSB prominence were lost. A reduction in funding would be highly unlikely to result in higher spend on UK originated funding given that this already represents such a high proportion of overall programming budget.

¹ Ofcom PSB Annual Report 2012

Some may argue that if PSBs enjoyed less prominence than at present their place would be taken by non-PSBs which become more prominent. In effect, this argument implies that PSBs reduced investment in UK content will be replaced by a similar increase by non-PSBs. Such an argument, neglects the various conditions attached to PSB status which require various forms of UK content to be commissioned. In addition, there is little evidence to support this hypothesis.

Direct costs and benefits to business calculations (following OITO methodology)

100% of the cost of Channel 4 and BBC having these prominent slots are absorbed by business. There is a net cost to business from the proposed policy. Therefore it is defined as an IN.

Equivalent Annual Net Cost to Business (EANCB) = £3.7 million

Impact on Small and Micro Businesses

Most of the businesses directly impacted by the EPG regulations are large. However, some independent producers and their suppliers may be small or micro businesses which should benefit from the proposed change. It is not possible to quantify this effect.

Wider impacts

Other impacts that could be noted is negative influences on the creative industries and exports due to fewer high quality shows being developed. "Total revenue from the international sale of UK TV programmes and associated activities was £1,475m, a 9% increase from £1,355 in 2010" (UKTI, 2011, UK television exports). Independent production is a driver of the UK creative economy. The creative industries contribute 6% of GDP, employ over 2 million people and export over £16bn annually.

Summary of preferred option with implementation plan

Ensure PSB Prominence by redefining an EPG service

The Government is proposing to consult on redefining an EPG service so that it is brought up to date with recent developments in TV technology and to give it the flexibility to adapt to future technological developments. We believe that this will likely involve a number of changes to the current EPG regulatory regime set out in the Communications Act 2003 including:

- i. Redefining an EPG in primary legislation
- ii. Introducing an Authorisation regime to replace the EPG licensing regime in line with European regulations
- iii. Including on-Demand and HD services in the list of Public Service Channels

DCMS will consult on its proposals in relation to EPG with all relevant stakeholders including the PSBs, commercial broadcasters, platform operators, and potential platform operators to make certain that both costs and burdens are minimised and that the proposals properly take into account future technological change and the impact on all parts of the broadcast value chain. Ofcom will also consult with the industry on the implementation of these changes as and when the power is enacted.