

Virgin Media

Electronic Programme Guide Policy

14 July 2017





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1. INTRODUCTION

1.1 Virgin Media ('VM') is an innovative UK entertainment and communications business. The unique nature of the VM proprietary television platform that it owns and operates throughout the UK, the relationship it has with its customers, the enhancements it continues to make to its customers' viewing experience through introducing new technologies and the different ways its customers wish to access content, necessitate VM being innovative in the way it presents programming to its consumers.

1.2 The terms on which services are carried on the VM television platform are subject to negotiation and agreement with VM. Where terms have been agreed with a channel provider for carriage of a linear television service or connected service (as defined in section 316 of the Communications Act 2003) ('Channel'), VM will list the relevant Channel on the linear EPG on the VM Set Top Boxes provided by VM under its Television Licensable Content Service Licence ('VM EPG'). VM may at its discretion include services other than Channels within the VM EPG.

1.3 Under its Television Licensable Content Service Licence, VM is required to comply with Ofcom's Code of Practice on Electronic Programme Guides published in July 2004 ('Ofcom Code'). Pursuant to the Ofcom Code, VM is required to publish and comply with an objectively justifiable method of allocating listings to Channels on the VM EPG. This statement represents VM's policy for listing Channels within the VM EPG ('EPG Policy').

1.4 Allocation of genres and slots within the VM EPG will be determined by VM on the basis of this EPG Policy, pursuant to which:

- (a) designated public service broadcaster Channels will be allocated an EPG slot according to their genre as set out in section 2 of this EPG Policy and then, within that genre, such Channels will be afforded appropriate prominence according to the set of criteria set out in section 3 of this EPG Policy;
- (b) designated local Channels will be allocated an EPG slot according to their genre as set out in section 2 of this EPG Policy and then, within that genre, such Channels will be afforded appropriate prominence for those Channels according to the set of criteria set out in section 3 of this EPG Policy;
- (c) in relation to new Channel launches, Channels will be allocated a VM EPG slot according to the criteria set out in section 4 of this EPG Policy; and
- (d) VM has the option to facilitate additional opportunities for new and current Channel providers to secure alternative EPG slots by making available existing slots which are or may become vacant in accordance with the processes set out in section 4 of this EPG Policy.

1.5 VM will apply this EPG Policy in line with its regulatory obligations and in such a way as it considers of most benefit to its viewers and the long-term development of the VM platform and will ensure its approach is objectively justifiable.

1.6 Access to the VM EPG will take into account the operational and technical features currently deployed and any future developments and enhancements of the VM EPG product and software.

1.7 This EPG Policy is effective from 14 July 2017 and supersedes all previous and existing policies. Decisions of VM relating to allocation of slots on the VM EPG under previous policies should not be considered as relevant to the interpretation of, or allocations under, this EPG Policy.



2. DETERMINATION OF GENRE

2.1 In determining which genre (or sub-genre, if applicable) a service will be allocated, VM will consider a range of factors, including but not limited to the following (which are listed in no particular order):

- (a) the genre indicated on the Ofcom licence, where relevant;
- (b) the nature of the programming schedule, giving due weight to the proportion and balance of the programming content over time;
- (c) allocation of genre to services under the same brand on other platforms;
- (d) any marketing material and publicity surrounding the nature of programming; and
- (e) any other information provided by the service provider to support an application to a particular genre.

2.2 In order to assist its customers with navigation of the VM EPG, VM has currently divided the 'TV Guide' menu into a number of genres. VM reserves the right to periodically review the presentation of genres, such that VM may add or remove genres, change the order of genres or change the categorisation of content included in a particular genre. At present, the 'TV Guide' menu is currently divided into the following genres: Documentaries, General Entertainment, International, Kids, Lifestyle, Movies, Music, News, Sport, Radio, Shopping and Adult.

2.3 Once a service is listed, the nature of the content or the schedule may change such that a particular service is more appropriately listed in another genre. If a service is likely to be moved to a different genre or sub-genre, VM will contact the service provider(s) to explain the rationale for and details of any proposed move. VM will consider any submissions made by a service provider to change or remain in a particular genre, but the final decision shall be made by VM. If a service moves genre, VM will allocate a new VM EPG slot in the appropriate genre in line with this EPG Policy.



3. PUBLIC SERVICE BROADCASTERS AND LOCAL CHANNELS

3.1 In accordance with the Ofcom Code and section 310(2) of the Communications Act 2003, VM is required to give certain designated public service broadcasting ('PSB') Channels 'appropriate prominence' in allocating an EPG listing to their public service linear television channels. Local Channels are also to be given appropriate prominence for such Channels. In deciding how to give 'appropriate prominence' to such Channels, VM will ensure that its approach has regard to the interests of citizens and the expectations of consumers. What is 'appropriate prominence' will vary as it is understood that the degree of prominence required under the Ofcom Code is not prescriptive and also takes into account that public service content varies greatly in terms of the target audience and the particular nature of the content. Also of relevance is the date of the relevant Channel's launch into the VM EPG.

3.2 VM will therefore consider the following factors in applying the requirement for 'appropriate prominence' (which are listed in no particular order):

- (a) the content on the Channel;
- (b) the genre of the Channel;
- (c) the Channel's actual or likely performance, scope, target audience and appeal to VM's customer base;
- (d) to ensure comparability of rights granted to VM compared to the PSBs' own offers and to offers to third parties, the breadth and attractiveness of distribution rights and features across devices and access points granted by the Channel to VM and to be made available to VM customers;
- (e) the unique value of the Channel to its customers including whether the Channel is a multiplex of an existing PSB or Local Channel or higher definition version of a standard definition Channel;
- (f) the VM EPG slots available at the time of the launch of the Channel;
- (g) existing and future slot availability within the relevant genre;
- (h) the overall and relative prominence of the broadcaster of the Channel's brand within the VM EPG together with other access points and other services from the broadcaster of the Channel; and
- (i) where similar and comparable Channels and/or content is listed within the EPG.

4. ALLOCATION OF SLOTS IN THE VM EPG

4.1 At any given time, there may be a number of vacant slots within the VM EPG and, from time to time, further slots may become vacant within the VM EPG and VM may, in its discretion, allocate a vacant slot to a service on the basis of the procedure set out in section 4.2 or the qualitative assessment under section 4.5.

4.2 VM may exercise its discretion to offer vacant slots on the basis of a competitive tender, through the issue of a Request for Proposals ('RFP') to all service providers which are either:

- (a) already listed in the EPG within the relevant genre or notified to change genre in accordance with 2.3; or
- (b) in the process of negotiating a carriage agreement with VM for a service to be listed in the EPG within the relevant genre; or
- (c) have notified VM of an intention to negotiate a carriage agreement with VM for a service to be listed in the EPG within the relevant genre.

4.3 When issuing an RFP, VM will:

- (a) specify the conditions for participating in the RFP process;
- (b) identify the time limits for responding to the RFP;
- (c) describe the award procedure VM intends to follow;
- (d) identify the objective criteria which VM shall apply in determining, from VM's perspective, which service provider has provided the most attractive proposal for the slot; and
- (e) identify any key terms of the agreement for the provision of the EPG service it requires the successful applicant to enter into in relation to the slot, including as to the duration of the allocation of the slot.

4.4 When carrying out a competitive tender process, VM reserves the right:

- (a) to establish terms of the tender which limit which services are eligible for the vacant slot;
- (b) not to allocate vacant slots based solely on price. In particular, VM may retain the discretion to determine the quality threshold criteria to assess which proposals are suitable for consideration in a tender process. Those qualitative requirements may relate to factors such as those identified in section 4.5; and
- (c) not to allocate a slot after issuing an RFP.

4.5 VM may, at its discretion, allocate slots on the basis of a qualitative assessment in accordance with some or all of the following policy considerations (in no particular order):

- (a) the service's actual or likely performance, scope, target audience and appeal to VM's customer base;
- (b) consistent with VM's connected TV and multi-screen product offering, VM will seek to locate those services which provide a breadth of distribution rights, content and features across devices and access points ahead of those services which do not;
- (c) priority will be given to a provider which offers VM's subscribers sufficiently compelling, unique or exclusive content;

- (d) where desirable for an enhanced viewing experience, 'sister' services (a service which is manifestly linked to another service by branding, scheduling or cross promotion) may be placed adjacent or linked via functionality to an existing principal or sister service;
- (e) where a slot is vacated by a service moving to another slot on the VM EPG following award of that new slot under section 4.2, VM may allocate the vacated slot to a sister service of the service which has moved, even in circumstances where the requirements of section 4.5(d) are not satisfied;
- (f) free services will not be afforded priority over Pay TV services;
- (g) if applicable, the slot allocation of a particular service on alternative platforms; and
- (h) the likelihood of any future anticipated service launches.

4.6 Unless VM decides to allocate a vacant slot in accordance with the procedures described in sections 4.2 or 4.5, a service newly launching on the VM EPG or otherwise vacating its slot will be allocated a slot number on the basis of the next logical sequential slot available at the end of the appropriate genre.

4.7. VM may introduce new number ranges and slots within the VM EPG to increase the availability of vacant slots to allocate to new and existing services in accordance with section 4 of this EPG Policy.

4.8 VM is under no obligation to allocate vacant slots within the VM EPG, accordingly VM may:

- (a) leave a vacant slot blank indefinitely;
- (b) delay the decision to allocate a vacant slot until such time as it chooses; or
- (c) reserve a vacant slot to accommodate future service launches.

4.9 VM may, from time to time, after consulting with service providers:

- (a) fill any vacant slot within a genre or sub-genre by moving services listed below the vacant slot up the VM EPG; or
- (b) move the services within a genre or sub-genre to a new number range.

4.10 When moving services in accordance with section 4.9, VM will generally retain the relative order of the services moved. In carrying out such a move under 4.9(a), VM may, depending on the circumstances, allow service providers to elect to retain the existing slot within the VM EPG, in which case other services listed below their service in the VM EPG prior to the move, and those launching into the genre or sub-genre subsequently, may be listed above their service following the move.

4.11 Where a service provider wishes to swap services on the VM EPG between the EPG slots then allocated to its own services, it may apply to VM to do so. VM will consider any submissions made by the service provider in relation to the proposed swap. The final decision as to whether to allow a swap shall be made by VM in its sole discretion and in line with this EPG Policy.

4.12 All slots are subject to change from time to time in accordance with this EPG Policy. VM will review any changes to VM EPG slots in the light of its regulatory obligations, the relevant agreement for the provision of EPG services and the long-term development of the VM platform and consumer offering.



5. TERMS OF ALLOCATION OF AN EPG SLOT

5.1 Allocation of an EPG slot does not give rise to any proprietary, equitable or other rights for the relevant Channel or service and all slots remain in the ownership and property of VM. Where VM agrees to carry a Channel or service on the VM television platform, VM will provide EPG services under a carriage agreement or other agreement for the provision of EPG services with the Channel provider or service.

5.2 VM does not guarantee a particular service's slot or the page number the service appears on in the VM EPG, or the genre or relative positioning of the services, unless otherwise agreed in relation to EPG slots allocated pursuant to a competitive tender under section 4.2.

5.3 Unless otherwise agreed in relation to EPG slots allocated pursuant to a competitive tender under section 4.2, VM may cease providing a listing in the VM EPG:

- (a) if the relevant service moves to another slot on the VM EPG;
- (b) on expiry or termination or suspension of the relevant carriage agreement with VM;
- (c) on the discontinuation of the relevant service; or
- (d) otherwise in accordance with any relevant agreement for the provision of EPG services.



6. CHANGES TO THIS EPG POLICY

6.1 VM will carry out periodic reviews of this EPG Policy and where necessary will take steps to consult broadcasters at least one month prior to any changes to this EPG Policy becoming effective, unless the relevant changes to the Policy are not significant or would impact only on a limited number of broadcasters.

6.2 In circumstances in which VM considers, following a periodic review of this EPG Policy, that any proposed changes to this EPG Policy are not significant or would affect only a limited number of broadcasters, VM may decide to consult for a shorter period and/or with a narrower group of broadcasters.