



## **RESPONSE OF VIACOM INTERNATIONAL MEDIA NETWORKS (VIMN) TO DIGITAL UK'S CONSULTATION ON REORGANISATION OF THE DTT LCN LISTING AND CHANGES TO DIGITAL UK'S LCN POLICY**

Viacom International Media Networks (VIMN) welcomes the opportunity to respond to this consultation on Digital UK's plans to update its management of the DTT platform. VIMN is the most successful international supplier of pay TV channels to the UK market and has owned Channel 5 since summer 2014.

VIMN welcomes the broad approach outlined in the consultation paper, which we believe will lead to a simpler, more flexible and more logical approach to LCN listings. We are disappointed that Digital UK has not looked at more radical changes, including the introduction of more genres such as shopping and integration of IP channels into the genre lists. However, we recognise that such ambitious changes are outside the scope of this consultation; we hope they can be looked at again when the listing rules and policy are next reviewed.

While we support the majority of the changes proposed, we are opposed to the proposal to vary the associated channels rule. We set out our views on that and the other proposals in our responses to the consultation questions.

*Q1. Do you believe that Option A would be a suitable new LCN listing structure for the DTT platform?*

*Q2. Do you believe that Option B would be a suitable new LCN listing structure for the DTT platform?*

*Q3. Do you have a preference for one option over the other?*

VIMN recognises the increased demand for LCNs in several genres and hence the need to re-order the listings. As a broadcaster of children's channels (Milkshake on Channel 5 and Nickelodeon on pay platforms) we recognise the importance of vigorous consumer protection, especially in respect of younger viewers. Therefore we think that of the options put forward, the arguments for Option A are far stronger.

*Q4. Do you have any other comments on Digital UK's proposed changes to the LCN listing?*

VIMN thinks it is important to recognise that, while the current proposals are appropriate for the rest of the decade, more radical measures may well be needed to address changes in the development of the platform. The next review, around 2020, will need to confront such issues as the longevity of the interim muxes, the growth in the number and take-up of IPTV-delivered channels on hybrid platforms, and the potential for the platform to move to the more efficient transmission and encoding technologies.

*Q5. Do you agree with Digital UK's proposed approach to the timing of any changes?*

Yes. It seems eminently reasonable.

*Q6. Do you agree with Digital UK's proposals regarding minimum broadcast hours?*

It has always surprised us that there is no minimum hours requirement on the platform. This has allowed broadcasters – including VIMN - to occupy LCNs without broadcasting for more than a minimal period. Independently of this consultation, VIMN had already decided to remove VIVA+1 from the platform in the near future.

We support the introduction of the minimum broadcast hours rule, which we believe is fair and proportionate. We question whether the grace period for existing channels is more generous than it needs to be.

We have one additional concern. It is not entirely clear whether the consultation paper envisages children's channels delivered as so-called "streamed services" should be obliged to abide by the 14 hour rule. VIMN believes that if such channels are to be located in the children's genre (a proposal we support<sup>1</sup>), then as a condition of this they should be bound by the 14 hour rule. Otherwise there is the potential for unfair competition, with a streamed channel occupying a valuable LCN in the children's genre without having to broadcast a minimum number of hours, to the detriment of non-streamed channels that are obliged to follow the minimum hours rule.

*Q7. Do you agree with Digital UK's proposed new launch process and timings?*

While we accept that the current timescales are too long in total, we do not think Digital UK has got the solution quite right.

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<sup>1</sup> See answer to Question 18 below

A lot of planning goes into major channel launches (such as the launch of our channel Spike in April 2015), and it is extremely useful to get agreements on launch date, LCN position and so forth well in advance of actual launch. This allows commissioning, marketing and commercial decisions to be made with certainty around where a new channel will sit and when it will launch; a shorter timescale leads to potential uncertainty around quite major decisions.

Conversely, it is not clear why a broadcaster should be permitted to delay a channel launch for more than a few weeks. A longer timescale has the potential to encourage broadcasters to name unrealistically early dates for the launch of their channels, knowing they can delay the launch for months; indeed, unscrupulous broadcasters might name an intended launch date with no intention of actually keeping to it.

Therefore, we suggest keeping the maximum period for applying for a LCN to the current 12 weeks – but shortening the period beyond intended launch date in which channels can launch to four weeks. This would maintain the shortened overall maximum time for launching a channel to 16 weeks, as proposed, but put the emphasis on channels to plan their launches properly and only overshoot their intended launch date in the event of genuinely unforeseen circumstances.

*Q8. Do you agree with Digital UK's proposed approach to LCN sharing?*

Yes, this seems sensible.

*Q9. Do you agree with Digital UK's definition of 'common control'?*

Yes. This is much clearer than the current definition, which requires channels under common control to demonstrate common branding or cross-promotion in addition to their joint ownership. As broadcasters' channel portfolios grow and diversify, in order to target different demographics, each channel is likely to look less similar than each and every one of its siblings while still being part of a channel family. Only if channels are not part of the same broadcast group should branding considerations come to the fore.

*Q10. Do you agree with Digital UK's proposal regarding the 'public service rule'?*

This is a sensible tidying up.

*Q11. Do you agree with Digital UK's proposal regarding the 'associated channels rule'?*

No. We recognise the rule has had value in bringing channel families closer together, and we note Digital UK's observation that "the revised rule has been used by a wide variety of broadcasters". We believe this has been to the benefit of viewers, and has allowed channel groups to be consolidated in particular parts of the EPG. Reducing the number of places either side of a vacated LCN would reduce the opportunities for

family consolidation and make many more vacant LCNs subject to the new ‘launch into vacancy’ mechanism, which would be less likely to result in the sort of viewer benefits achieved by family consolidation heretofore.

We do not believe Digital UK has put forward a coherent justification for reducing the number of channels either side of a vacant LCN that the associated channels rule can bring into play. The current rule has worked well; the only reason for amending it appears to be the theoretical and so far untested benefits of the proposed new Stage 3 rule. We think a new rule can be introduced without amending the associated channels rule.

*Q12. We would welcome stakeholder’s views on the options for Stage 3 of the vacated LCN rules.*

VIMN recognises that the current mechanism for filling vacant LCNs not covered by the public service and associated channels rules is relatively arbitrary, favouring channels that happen to launch at a time when a LCN is vacant and then only if they already have an associated channel. We welcome a fairer and more rational mechanism.

Of the two suggestions put forward, we find limited justification for a ‘beauty contest’ approach but would not be happy with a pure winner-takes-all ‘transactional’ model that may not be to the best advantage of the platform. Instead we would favour a hybrid model under which a channel would have to meet certain requirements – covering for example geographic reach and hours of transmission – in order to qualify for the auction. That would ensure that niche channels of interest to only a limited audience cannot outbid channels that have a broad appeal.

We think a pure ‘beauty contest’ approach would be complicated and necessarily subjective; and it would be difficult to see how, even if Digital UK shareholders were kept at arm’s length from the process, there would not be a risk of the perception - and quite possibly the actuality - of their engagement in a decision making process about broadcasters which are their competitors.

A limited trading model – subject to some basic ground rules as to the type of channel that can benefit - could lead to a fairer and more transparent means of filling vacant LCNs. However, we would be concerned that the proceeds should be seen to go clearly towards the development of the platform and not into the pockets of shareholders either directly or through a reduction in fees they would otherwise pay. Broadcasters already pay the multiplex operators substantial carriage fees; this should not be seen as a way for them to milk broadcasters further.

As we stated in response to Question 11, we do not believe this mechanism should become the norm for filling vacant LCNs. We look forward to seeing the precise ways in which such a mechanism might be operated as and when Digital UK publishes a more detailed consultation.

*Q13. Do you agree with Digital UK's proposed timeline for channels to complete an LCN move following an allocation under the vacated channel rules?*

Yes, it is another sensible clarification.

*Q14. Do you agree with Digital UK's proposals to amend the rules around channel providers reordering channels within their channel portfolio?*

We strongly support these proposals. As their channel families grow<sup>2</sup>, broadcasters have a legitimate interest in rationalising their portfolios; because broadcasters want to maximise audiences, such changes are also in the interests of viewers.

The present rules require broadcasters to engage in somewhat involved justifications for moving channels, without clarity on how such arguments are assessed. We do not believe it is reasonable for Digital UK to be put in the position of effectively second guessing broadcasters' channel strategies (except in the very limited circumstances proposed).

We agree with the proposal to allow channel groups to reorder their portfolios on up to two occasions in any 12 months; and agree this should be reviewed after 18 months as suggested.

*Q15. We welcome stakeholder views on whether public service channels should be permitted to reorder the channels they control within a genre.*

As the consultation paper makes clear, in effect the proposal only applies to the BBC as it is the only broadcaster with more than one public service channel. Allowing the BBC to benefit from the public service rule and the proposed reorder channels rule could allow it to benefit ahead of other public service channels. For example, at the time the BBC took BBC Three on-line only, it vacated LCN 7. If it had had another channel on the platform with a high LCN it would have been able to move it into that LCN, thereby depriving local television services in Scotland and Wales of the opportunity to move into it.

While we recognise that this change would not apply to any actual current situations, on balance we would prefer it not to be made.

*Q16. Do you agree with Digital UK's proposals around channels changing their name and/or content?*

Yes. Channel portfolios evolve over time and broadcasters should have the freedom to replace or re-name a channel without having to demonstrate to Digital UK that the change represents an 'evolution'.

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<sup>2</sup> For example, VIMN's portfolio has grown considerably in recent years. When we bought Channel 5 in 2014, it had five channels on the platform and VIMN had one. We have added four channels since.

*Q17. Do you agree with Digital UK’s proposal to retain but re-word the ‘shuffle-up’ rule?*

Yes, it is sensible to hold this right in reserve.

*Q18. Do you agree with Digital UK’s proposals around the treatment of streamed services?*

VIMN agrees with the proposal to include children’s and adult “streamed services” within their respective genres; and the proposal to have a separate genre for all other such services. However, we are not sure that “streamed services” is the right word to use to describe these channels. All channels delivered by IPTV are streamed, so it is not clear that this is a sufficiently distinct description. We also question whether it is as consumer friendly as implied; “streaming” is a common term for video services made available on-line. We think a new description that would be both more precise and widely understood needs to be found, similar to “red button services”.

*Q19. Do you have any comments on the proposed new wording and structure of the LCN Policy, aside from issues you have mentioned in response to other consultation questions?*

Our only observation is that in both the current and proposed versions of the Policy no mechanism is set out for how a channel leaves the platform, in terms of notifying Digital UK, required notice period (if any) and similar considerations. For completeness, there should be a clear such procedure.

*Viacom International Media Networks*

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