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**Statement on reorganisation of the DTT LCN listing and on changes to DMOL's LCN policy**

Published: 30 July 2012

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# 1 Executive Summary

## 1.1 Introduction

This statement sets out the decisions that DMOL has made on the matters covered in our 29 March 2012 ‘Consultation on proposals for the reorganisation of the DTT LCN listing and on changes to DMOL’s LCN policy’. The consultation closed on 24 May 2012 and we received a total of 131 responses, 33 from organisations, 10 from political representatives and 88 from individuals, of which 86 dealt specifically with the LCN position of the Irish language channel TG4.

In considering the consultation responses and making our final decisions, DMOL has been guided by the objectives and the analytical framework set out in the consultation. The DTT LCN listing and policy conform to the requirements of the Communications Act, 2003 (the “CA”) and Ofcom’s Code of Practice on Electronic Programme Guides published in July 2004 (the Ofcom “EPG Code”). Within this regulatory framework, DMOL’s objective is to develop its listings and apply the LCN Policy in such a way as it considers to be for the long-term benefit of the DTT platform and in the interests of viewers (in each case as determined by DMOL members in accordance with the Policy) and in accordance with DMOL’s FRND obligations.

DMOL has always been subject to Ofcom regulation via the multiplex licences of its shareholders and has considered itself to be subject to and bound by the provisions of the Ofcom EPG code, despite hitherto not having held an EPG provider licence. In a development since the consultation, DMOL has applied for and has been granted an EPG provider licence, making DMOL explicitly subject to the EPG code and directly regulated by Ofcom. We do not consider that the holding of an EPG provider licence will result in any change in DMOL’s behaviour, since we have in any case always considered ourselves as subject to the Ofcom EPG code and behaved in a way which in our view conforms to the code. However the holding of a licence may address the concerns of those stakeholders who called in their consultation responses for a more direct regulatory relationship between Ofcom and DMOL.

## 1.2 Decisions on the LCN listing

DMOL has decided to maintain a genre based listing and to implement most of the changes consulted on. The table below sets out DMOL's decisions on the LCN listings, and for comparison the current LCN listings and the proposals consulted on.

Figure 1: Final LCN Listing Decision

Genre*	Final LCN Listing Decision		LCN Listing consulted on		Current LCN Listing	
	First LCN	Last LCN	First LCN	Last LCN	First LCN	Last LCN
General Entertainment	1**	99**	1**	99**	1 60	49 69
Local	-	-	-	-	75	79
Navigation page	100	-	100	-	-	-
HD	101	120	101	109	50	59
Children's	121	130	110	119	70	74
News	131	150	120	139	80	90
Adult services	171***	198***	300	349	91	100
Text and MHEG services	200 225	224 299	200 225	224 299	101	120
Interactive services	300	320	350	399	301	320
IP delivered services	400	499	400	499	-	-
Radio	700	750	700	750	700	750

\* Genre definitions are incorporated into the LCN Policy.

\*\* LCNs 8 and 45 have been reserved for Local services with PSB status. Most local services are also likely to fall into the General Entertainment genre based on their content.

\*\*\* Note that LCNs 170 and 199 are reserved for the slates that currently bookend the Adult section.

Having reviewed the responses to the consultation in detail, the significant changes we have made from the consultation proposals are:

- We have reordered the Adult and Text and MHEG genres as compared with the order consulted on and will now position the Adult genre as the last of the television genres and ahead of the Text and MHEG genre. The two genres will therefore remain in the same order that they are today. Our decision is based on the way in which viewers access MHEG linked services and the greater growth we anticipate in this genre as compared with the Adult genre. We also believe that, having reunited the Adult genre, the consumer protection mechanisms currently in place in terms of the genre order, the use of buffer genres and the use of bookends will continue to protect younger viewers from

accessing unsuitable material in adult services by inadvertently scrolling upwards from content which is attractive to them.

- Because of the different position of the Adult genre, we have allocated a slightly smaller range of 28 LCNs to it, as opposed to the 48 LCN range consulted on. However, we believe that this range will be adequate to accommodate the growth we anticipate in the genre over the next three to four years.
- We have decided that the HD genre should be expanded from the 10 LCN range consulted on to 20 LCNs in light of the Ofcom consultation published at the same time as ours. This suggested that the 600 MHz spectrum band vacated by digital switchover might be made available on an interim basis for DTT and could possibly be used for the simulcast of HD channels to drive the take-up of the DVBT2 standard. DMOL may launch a future consultation on the ordering of HD channels which have yet to launch on the DTT platform.
- The expansion of the HD genre results in minor changes to the LCN ranges allocated to the Children's and News genres, but their size and relative position is unchanged.
- As a result of the change in position of the Adult genre there is no longer a need to move the Interactive genre, which we will leave in its current position.
- As part of the implementation process we aim to put services entitled to appropriate prominence at the head of the relevant genres where movement or changes in the genre make this possible and we will therefore move the BBC Red Button services to LCN 200 at the head of the Text and MHEG services genre.
- As part of the process of implementing the LCN changes we will also close up existing gaps in the LCN listing in the General Entertainment, News, Text and MHEG services and Interactive services genres. The gaps that we plan to close are:
  - General Entertainment – LCN 48
  - News – LCN 86
  - Text – LCN 107
  - Interactive Services – LCNs 303, 305 and 308.

This closing of gaps and the resulting process of moving channels up the LCN listing is subject to agreement from the channels whose LCNs will be changing, as per paragraph 8.7 of new DMOL LCN Policy. Our intention to close the gaps means that with immediate effect from the publication of this statement, the vacant LCNs above will not be available to be used for the launch of an associated channel. Please refer to the full channel listing in Annex 2 which shows which channels will be affected by the closure of gaps and their new (subject to agreement) LCN positions.

We are taking measures to improve navigation on the DTT platform and intend to trial an information page at LCN 100 which sets out the order and LCN range of the subsequent genres and can also provide platform information useful to viewers, on re-tune events for example. This will be available to viewers with HD boxes. We are setting up a Navigability Action Plan to explore measures we might take to support navigability on the platform, including in co-operation with manufacturers and the DTG. We are also continuing to

investigate the potential to improve navigation to other genres. These navigation measures will be implemented as soon as possible although may follow slightly after the implementation of the listings changes.

The changes to the LCN listings will be implemented on 19 September 2012 and the re-tune will be accompanied by a communications plan along the lines set out in the consultation. We will shortly be in touch with those service providers who are affected by the changes.

### **1.3 The timing and scope of future reviews of the LCN listings**

We have made our decisions in light of the developments we anticipate on the DTT platform and in light of the clear view from some channel providers that frequent reviews of the LCN listings result in commercial uncertainty for channels on the platform and can inhibit investment decisions. We understand these concerns and while DMOL cannot simply undertake to increase the period between reviews irrespective of market developments, we do not anticipate initiating a further major review of the LCN listing for three to four years. However, DMOL must reserve the right to initiate future reviews if there is significant change in the market, if there are changes in multiplex availability or capacity not anticipated in this review, or if significant problems arise with the existing LCN listing.

A wide range of views were expressed on the potential scope of future reviews. While consumers' views may not change rapidly, the market is developing rapidly with substantial sales of connected devices and the launch of YouView, with other IPTV services to follow. Given this speed of development of the DTT market and of other platforms, we do not think it would be appropriate to make any comment or commitment in this statement as to the likely scope of future reviews.

### **1.4 Decisions on the LCN Policy**

DMOL is confident that our proposed LCN Policy satisfies the requirements of Ofcom's EPG Code and satisfies the requirement to be fair, reasonable and non-discriminatory as between services on the platform. In response to points made in consultation responses we have made some changes to the details of the draft LCN Policy consulted on. These are:

- We have inserted a new clause at 1.5: 'For the avoidance of doubt, DMOL interprets its FRND obligations to mean that the Policy is applied in a consistent manner to all channels on or joining the platform, regardless of their ownership'.
- The associated channels rule will be retained. However, in view of its purpose to support viewer navigation, we are limiting the operation of the rule to channels with LCN listings within a range of 5 LCNs above or below the vacated LCN. Only channels associated with one of these 'adjacent' channels will be able to take advantage of the rule to move into the vacant LCN. For the avoidance of doubt, channels which are entitled to appropriate prominence under section 310 of the Communications Act cannot be used as an 'anchor channel' for the purpose of the operation of the rule.

- LCN swapping will be permitted in limited circumstances and at defined times where it serves to order channels in a way which more closely reflects viewer expectations.
- We will inform all channel providers directly of all consultations.
- The revised LCN Policy is included at Annex 3 of this statement and comes into effect immediately on publication of this statement.

## 1.5 Next steps

Following the publication of this consultation, our next steps will be as follows:

- DMOL's new LCN Policy, which is set out in Annex 3 of this document comes into immediate effect on the publication of this statement, when version 5 of the policy will replace the previous version 4.
- We will be contacting channel providers by mid-August to confirm the exact timing and the details of implementation. This will also provide us with an opportunity to confirm the agreement (or otherwise) of those channel providers whose LCNs are changing in order to close gaps in the General Entertainment, News, Text and MHEG services and Interactive services genres.
- We will also prepare a pack of communications materials which we will circulate to channel providers by the middle of August.
- We aim to publish the results of the DTG testing of this rearrangement of the LCN listing by the end of August. These will be available on DMOL's website.
- The LCN changes will be made on 19 September 2012.

## 1.6 Structure of this document

In the remainder of this document we have set out our decisions and the reasons behind them in further detail, with sections on the LCN listing, on implementation issues, on the scope and content of future reviews and on the changes we are making to the LCN policy.

Annexes to the document include a summary of all the consultation responses and also set out the new LCN listing, channel by channel, in the form it will take after the implementation of the changes on 19 September 2012 together with the new LCN Policy.

## 2 Decisions on the LCN listing

### 2.1 Introduction and framework for decision

This statement sets out DMOL's decisions on the DTT LCN listing based on the consultation published on 29 March 2012 and on a detailed consideration of the responses to the consultation. DMOL received a total of 131 responses, 33 from organisations, 10 from political representatives and 88 from individuals. A summary of the responses received is set out in Annex 1 to this document. A number of the consultation responses were confidential, but in the summary, views are attributed where the response was non-confidential. The non-confidential responses have been published on DMOL's website<sup>1</sup>.

The decisions which DMOL has taken have been arrived at by considering our proposals and the consultation responses in the context of the objective and the analytic framework which were set out in the consultation. The DTT LCN listing and policy conform to the requirements of the Communications Act, 2003 (the "CA") and Ofcom's Code of Practice on Electronic Programme Guides published in July 2004 (the Ofcom "EPG Code"). Within this regulatory framework, DMOL's objective is to develop its listings and apply the LCN Policy in such a way as it considers to be for the long-term benefit of the DTT platform and in the interests of viewers (in each case as determined by DMOL members in accordance with the Policy) and in accordance with DMOL's FRND obligations.

The objectives above have been used as the basis for developing an analytical framework against which we have tested our proposals and the consultation responses. Our decisions aim to:

- (1) Provide DTT viewers with an EPG ordering that gives them the best overall experience of the DTT platform both now and in the future. This balances consumers' views on the ease of use, navigability and appropriateness of the channel ordering (including appropriate protection for children), with their appetite for and ability to manage change to the channel ordering.
- (2) Provide for the medium-term evolution and competitive positioning of the platform over the next two to four years in a rapidly changing, competitive environment.
- (3) Provide the DTT platform's channel providers with appropriate certainty for their commitments to the DTT platform.
- (4) Ensure that LCNs are always allocated in an objectively justifiable and Fair, Reasonable and Non-Discriminatory (FRND) manner; observing section 310 of the Communications Act (2003) (the "CA"), which requires appropriate prominence to be accorded to services listed in section 310(4); and observing the Ofcom EPG Code.

DMOL has always considered that we are in practice subject to and bound by the terms of Ofcom's EPG code, even though we have not hitherto held an EPG provider licence. However, a number of respondents to the consultation were concerned as to whether DMOL was directly subject to the EPG code, as opposed to being indirectly regulated only via our multiplex shareholders. In a development since the consultation was published, DMOL has

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<sup>1</sup> Non-confidential responses can be found at <http://www.dmol.co.uk/Consultations/2012responses>

applied for, and has been granted, an EPG provider licence. This means that DMOL is explicitly subject to the EPG code and directly regulated by Ofcom. We do not consider that the holding of an EPG provider licence will result in any change in DMOL's behaviour, since we have in any case always considered ourselves as subject to the Ofcom EPG code and behaved in a way which in our view conforms to the code. However the holding of a licence may address the concerns of those stakeholders who called in their consultation responses for a more direct regulatory relationship between Ofcom and DMOL.

## 2.2 Issues to be addressed by DMOL's revised LCN listing

Most responses which touched on this agreed that DMOL's revision of the LCN listing must at a minimum address the issue of genres which have overflowed the existing LCN listing and had to be broken into separate parts. The revision must also ensure as far as possible that there are no further genre overflows in the next two to four years.

Some channel providers challenged this premise and the role that genres play on the DTT platform, arguing that they have little role given that there is no direct access to genres on the platform. DMOL accepts that the role of genres on this horizontal platform is more limited than on platforms where there is direct access to genre based pages on the EPG. Nevertheless, our research shows that viewers want the DTT EPG to be organised logically and agree that TV channels should be grouped by their content. The Kantar Media research showed that two thirds (66%) of viewers agreed with the statement that *channels should be grouped together by content type*, and that more than 7 in 10 of those aged 16-44 agreed with the statement.

We consider that it would be confusing to viewers to move away from a genre based organisation amongst the TV channels when allocating LCNs to new channels on the platform and simply to assign the next available LCN, as was suggested by some respondents. This would mean that viewers were faced with an LCN listing which was partly organised by genre (for channels that have been on the platform some time) and partly not (for channels that are newer to the platform). We consider that this mixture of approaches to the organisation of the LCN would cause confusion to viewers and be detrimental to the viewing experience, and that this long term detriment outweighs the short term disadvantage to viewers of the need to learn new LCN numbers for the minority of channels on the platform.

Simply allocating the next available LCN to new services launching on the platform (irrespective of their genre) would result in a more random arrangement of channel LCNs which in itself could represent a disincentive to investment in the platform by new service providers as they would have less confidence that viewers would be able to find their service, particularly if the new channel was surrounded by services of a different genre.

DMOL's decisions are therefore based on maintaining a genre based organisation to the DTT LCN listing.

## 2.3 Sizing the General Entertainment genre – the supply and demand for General Entertainment LCNs

A number of the specific genre proposals made by DMOL flow from the need we see for a significant expansion of the General Entertainment genre to 100 LCNs. Some responses called on DMOL to set out in more detail the reasoning that has led us to propose the increase in the size of this genre and the consequential moves for the Children's, News and Adult genres.

Annex 3 of this statement sets out the current LCN listing as of 23 July 2012. Since the beginning of 2012 further general entertainment channels have launched on the platform or applied for LCNs and two channels have now been allocated LCNs in the 'overflow' section of the General Entertainment genre at LCNs 60 onwards (although one has since withdrawn). There are currently only two vacant LCNs below 50. We are thus aware today of demand for 50 general entertainment LCNs for services which have already launched or are scheduled to launch in the near future.

Respondents questioned what capacity assumptions DMOL was making that would require such a significant increase in the number of available general entertainment LCNs. In this context it is significant that some respondents to the consultation argued that it is undesirable to review the LCN listing too frequently as this creates commercial uncertainty for channels on the platform and inhibits new investment. Our approach to sizing the General Entertainment genre (and other genres) has been to plan for a scenario with a possible but relatively high level of demand for general entertainment LCNs in order to minimise the likelihood of needing to initiate the next review of the LCN listing because of genre overflows in a three to four year timeframe.

The move of the HD genre to LCN 101 onwards vacates the LCN range 50 to 59, which would create a General Entertainment genre from 1 to 69 and means that demand for up to 69 general entertainment channels could be accommodated ahead of the Children's genre. However, it is necessary to move the Children's genre if demand is anticipated to exceed this level, in order to avoid an overflow in the General Entertainment genre.

As set out above, we are already aware of demand for 50 general entertainment LCNs. We anticipate that the completion of digital switchover together with mode changes on some of the existing six national multiplexes is likely to allow the delivery of a further five 24 hour video-streams on the existing multiplexes. In addition, the BBC is currently advertising for interest in a fifth 24 hour video-stream which can be accommodated on the HD multiplex, and has suggested that this capacity could be occupied by a single HD service or by three standard definition (SD) video-streams. There is also a realistic possibility that as a result of compression improvements it will be possible to offer further 24 hour video-streams on the existing six nationwide multiplexes. We can therefore envisage a scenario where more than ten additional standard definition video-streams might become available in the next two to four years.

DMOL has taken the view that between eight and twelve SD 24 hour video streams can be accommodated on post-switchover multiplexes. This may appear to conflict with the Zetacast Technical Evolution of the DTT Platform report<sup>2</sup> included in the Ofcom consultation on UHF bands IV and V<sup>3</sup> which assumes nine to ten SD 24 hour video streams. However the DMOL view is entirely consistent with the Zetacast work as their figures appear to assume that both PSB and Commercial multiplexes will operate with full resolution pictures whereas the Commercial multiplexes tend to operate streams at  $\frac{3}{4}$  resolution.

Utilising Zetacast's detailed work on DVB-T MPEG2 from their earlier study for local TV<sup>4</sup> and the existing post-switchover DVB-T multiplex parameters, revised stream numbers for PSB and Commercial multiplexes can be derived:

**Figure 2: Multiplex Capacity**

Multiplex					
Type	DVB-T Configuration				Total available Mbit/s
	Modulation	FEC rate	Guard Interval	FFT	
PSB	64QAM	2/3	1/32	8K	<b>24.128</b>
Commercial	64QAM	3/4	1/32	8K	<b>27.144</b>
Encoding					
	Video bitrate Mbit/s	Statistical multiplexing efficiency		Non-programme content Mbit/s	SD 24 hour video streams
Full resolution (720 pixels)	3.4	23%	2.6	1.5	<b>8</b>
$\frac{3}{4}$ Resolution (544 pixels)	2.8	25%	2.1	1.5	<b>12</b>

Source: DVBT specification, Zetacast, Ofcom, DMOL analysis

<sup>2</sup> Zetacast Technical Evolution of the DTT Platform 28 January 2012  
<http://stakeholders.ofcom.org.uk/binaries/consultations/uhf-strategy/zetacast.pdf>

<sup>3</sup> Securing long term benefits from scarce spectrum resources: A strategy for UHF bands IV and V  
<http://stakeholders.ofcom.org.uk/consultations/uhf-strategy/>

<sup>4</sup> Local Television Capacity Assessment: An independent report by ZetaCast, commissioned by Ofcom dated 13 February 2012  
<http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/zetacast.pdf>

All of the incremental video-streams can be split into multiple time parts, meaning that a single video-stream can give rise to the need for several LCNs. If each video-stream were split into two time parts, then ten incremental video-streams could give rise to the need for 20 incremental LCNs. We would expect the great majority of these services to be general entertainment, and have conservatively assumed that they all might be.

We have further considered whether we believe there are reasonable grounds for expecting demand for this additional channel capacity to materialise. We note that demand in the market for DTT multiplex capacity has historically generally exceeded supply, and given that Freeview is the largest TV platform in the UK, with a significantly smaller number of channels than are available on the other major UK TV platforms, we feel it is reasonable to expect that trend to continue into the future. We believe that DMOL must be prudent and be prepared for that outcome as it considers the potential demand for LCNs in the General Entertainment genre.

In addition to capacity on the existing six multiplexes, the new local multiplex currently being advertised by Ofcom will accommodate three video-streams. One of these video-streams will be occupied by local services with PSB status, which, as announced by DMOL in early July, and explained in section 2.7.1 will be allocated LCN 8 or 45 depending on availability. We expect the other two video-streams on the multiplex to be occupied by services which are available on a quasi-national rather than local basis and are likely to fall into the General Entertainment genre, further adding to the need for general entertainment LCNs. These quasi-national video-streams could similarly be time shared.

The availability of twelve or more further video-streams, combined with conservative assumptions on time sharing means that, having reached 50 LCNs already, demand for general entertainment LCNs could readily exceed 69 LCNs, whether or not non-PSB services which are available only on a local basis, are included in the General Entertainment genre.

In addition to the nationally available general entertainment services, if DMOL abolishes the local genre (as set out in section 2.6 of this statement) and allocates local services to genres based on their content, the capacity of the locally available multiplexes in Manchester, Cardiff and Northern Ireland means that there could be up to a further six video-streams carrying general entertainment content in these locations, with consequential further demand for general entertainment LCNs.

Given our revised objective of providing as much certainty as possible over a three to four year timescale (the reasons for this revised objective are set out in section 5.2) and taking the above factors into account, as well as the need to avoid genre overflows which trigger a further early review of the LCN listing, we have decided to take a precautionary approach and provided room for expansion in the General Entertainment genre on a 'worst case basis'.

We are therefore moving the HD, Children's and News genres, allowing capacity for up to 99 general entertainment LCNs. We note, however, that the relative positioning of the HD, Children's and News genres is not changing. Further, when considering the impact on these subsequent genres it is important to be aware that the provision for additional LCNs in the

General Entertainment genre has no immediate effect on the positioning of any children's or news channels within the channel listing since any empty LCNs in General Entertainment and all other preceding genres will be closed by Freeview televisions and boxes and are not displayed to viewers. Thus, those 41% of viewers who regularly scroll through the channel listing will initially find the children's and news channels in the same position in the channel listing as they are today – albeit with a new LCN. Viewers will then have the opportunity to adjust to the new LCN over time, as any new channels gradually arrive in the preceding genres.

### **2.3.1 Consideration of alternative approaches to reducing the size of the General Entertainment genre**

DMOL considered whether the children's genre alone could be moved to LCN 90 to 99, while leaving the News genre in its current position at LCNs 80 to 89, thus accommodating an increase in the size of the General Entertainment genre to 79 LCNs. However we have concluded that the News genre also needs to be moved. This is because:

- i. There is a need to increase the size of the News genre from 10 to 20 LCNs, as discussed in section 2.5 below.
- ii. We have concluded that it would be undesirable to move the Children's genre to LCNs 90 to 99, a range previously occupied by Adult services. We cannot be confident that every type of consumer equipment will react in the same way to the substitution of one genre by another in a given LCN range and we wish to avoid any possibility of children stumbling across inappropriate service information associated with the previous adult channels in the LCN 90 range if boxes have not been re-tuned.
- iii. We wish to retain the current ordering of Children's then News followed by the Adult genre in order to provide a suitable buffer between the Children's and Adult genres so that any child scrolling up from children's content would be less likely to reach adult content. (See Section 2.8 for our conclusions on the positioning of the Adult genre.)

These reasons mean that both the Children's and the News genres, as well as the Adult genre, have to be moved if the demand for general entertainment LCNs exceeds 69.

Some consultation responses proposed alternative approaches to reducing the size of the General Entertainment genre which might avoid the need to move the Children's and News genres. As set out in the consultation, DMOL considered but did not propose the creation of a dedicated Shopping genre. The decision not to propose a Shopping genre was supported by all the shopping channels and by most other consultation respondents for reasons that are set out in the summary of consultation responses at Annex 1. Those few respondents who argued in favour of the creation of a Shopping genre in general recognised that at this point, the demand from audiences for the creation of the genre, as seen in the research evidence, is not sufficient to warrant the disruption to the existing shopping channels that would be caused by creation of the genre. Some responses did call on DMOL to keep the creation of the genre under review and this point is discussed in section 5 on the scope and timing of future reviews of the LCN listing.

Other respondents proposed the creation of a Pay genre, or one for time-shifted channels (also known as ‘Plus1’ channels), which would have the effect of reducing the size of the General Entertainment genre, although they did not offer further reasons for the creation of these new genres. In the case of the proposed Pay genre, as set out in the consultation document, we do not consider that there are an adequate number of pay services on the platform to justify the creation of a new genre. In the case of the time-shifted services, we believe that creation of a new time-shifted genre would be disruptive to consumers’ established viewing habits and would not conform to viewer expectations, as the genre is not content based. We also note that on other platforms time-shifted channels are included in the General Entertainment genre.

We also rejected the idea of creating a limited-hours genre for the reasons set out in the consultation document, that the genre is not content based, and that channels can and do change their hours of broadcasting from time to time. It would be confusing to consumers if a change in a channel’s broadcast hours, which may not be apparent to the consumer, was to result in a change in the channel’s genre and LCN.

### **2.3.2 Impact of the increase in size of the General Entertainment genre on other genres and channels**

The increase in size of the General Entertainment genre has no effect on channels already in this genre, whose LCNs are unchanged, with the exception of those channels currently positioned after the HD genre which will be able to move up to the vacated LCNs from 50 onwards, to their benefit. Navigation to future GE channels launching on the platform will be improved as the genre has been reunited. This should encourage potential investment and growth in the platform and hence benefit consumer choice.

Channels in the HD, Children’s, News and Adult genres will all be required to change LCNs as a result of this decision though the relative ordering of the genres and of channels within the genre remains the same. While the change may cause some temporary disruption to those viewers who need to relearn LCN numbers, DMOL believes that this inconvenience is justified by the desirability of maintaining a genre based LCN structure while expanding the genres to allow for future increases in the range of services on the DTT platform. We aim to assist viewers with the transition through a communications programme ahead of the rearrangement and with improvements to navigation after the rearrangement. Our navigation plans are set out in section 3.2. Assisting viewers in this way will also help to reduce the impact of the change on channel providers.

Those viewers who scroll to find channels will be unaffected by the changes in the short term as TV’s and set top boxes close up empty LCNs and the order of the channel listing is largely unchanged, except for the move of the most recently launched general entertainment channels to LCN positions ahead of the HD genre. Viewers who use the LCN number or channel favourites to access channels will be assisted by the proposed communications programme. The lack of change in the relative positioning of channels in the channel listing in the short term, before any new channels launch, will also provide time for viewers to become familiar with the new LCNs.

DMOL believes that it would be beneficial to all the channels on the platform, and also viewers, to reduce the likelihood of requiring a further rearrangement of the LCN listing in the short to medium term by ensuring that the General Entertainment genre has adequate LCNs in it to meet a relatively high level of anticipated demand for LCNs.

### **2.3.3 Implementing the changes to the General Entertainment genre**

The LCNs from 50 to 54 will be vacated by the move of the HD channels to LCN positions 101 onwards. This means that general entertainment channels currently positioned at LCNs 60 onward, after the HD genre, will be able to move up to LCN positions immediately after the remainder of the general entertainment services, from 49 or 50 onward. There is currently only a single vacant LCN in the 1 to 50 range, at 48 (the vacant LCN at 45 has been reserved for local PSB services in Wales and Scotland). We propose to close gaps in the LCN listing in the course of the implementation process and will take this opportunity to move the channel currently at LCN 49, Food Network, to LCN 48 and close this gap. If Food Network decides to move to LCN 48, the channels currently at LCNs 60 onwards will be able to move to LCNs 49 onwards. This means that, with effect from the publication of this statement, LCN 48 will no longer be available for the launch of an associated channel.

These changes in LCN are subject to agreement from the channels concerned, as per paragraph 8.7 of the new DMOL LCN Policy.

## **2.4 Decision on the HD genre**

Most respondents who commented on this genre were supportive of DMOL's proposals to move the genre to LCN 101 and to renumber the existing HD channels in line with their SD channel equivalents.

Some responses questioned the existence of the HD genre as it is not content based and one suggested therefore leaving the HD genre in its current position and allocating future channels launching on the DTT platform the next available LCN irrespective of their genre. DMOL recognises that this genre is not editorial content based, but considers that there is a consumer and a navigation benefit in grouping together the HD services currently available on the platform. If consumers have invested in HD equipment it is beneficial to them to be able to find the HD services easily, and this is supported by the separate genre and by the change in HD LCN ordering we propose. The separate genre also allows DMOL to offer appropriate prominence to those HD services with PSB status at the head of the genre.

DMOL has decided to maintain a genre based organisation of the LCN listing and not to leave the HD channels in the middle of an expanding General Entertainment genre. We have also decided to move the HD genre to start at LCN 101. This allows adequate room for the expansion of the General Entertainment genre based on the reasoning set out in section 2.3 above. Viewers of HD channels will be assisted with the change by DMOL's proposed communications plan. However, HD channels will in the short term have slightly more channels ahead of them, including the general entertainment channels currently positioned

in the overflow region after the HD genre. We consider that this potential disadvantage is outweighed by the benefit of avoiding the greater long term confusion that would occur if DMOL did not maintain a genre based ordering of the LCN listing.

In the consultation, DMOL proposed sizing the HD genre at 9 LCNs, reserving LCNs 101 to 109 for HD channels. Some respondents suggested that this might not be sufficient. In a development after the preparation of our consultation, on 29 March 2012 Ofcom published a consultation 'Securing long term benefits from scarce spectrum resources – A strategy for UHF bands IV and V'<sup>5</sup>. This proposed a number of interim uses for the 600MHz spectrum band which has the capacity, if used for DTT, to accommodate two multiplexes. The consultation closed in June 2012 and its conclusions are not yet available. However, one of the uses proposed by Ofcom on a temporary basis for this spectrum band, which will become available at the completion of DSO, was the use of two possible new HD multiplexes for the HD simulcasting of SD channels to drive the uptake of DVBT2 equipment. Each such multiplex could accommodate up to five HD video-streams. Such DTT use could start quite quickly after an Ofcom decision, bearing in mind the speed with which the broadcasters were able to roll out access to temporary HD services ahead of digital switchover.

Taking into account this possible use of the 600 MHz spectrum, we have decided to increase the size of the proposed LCN range for HD services, from nine to 20 LCNs and to position it at LCNs 101 to 120. This reduces the risk of the HD genre overflowing in the short term but will have the effect of moving the start points of the Children's and News genres to LCNs 121 and 131 respectively. Having taken the decision to move the HD genre and to maintain the current genre order, the revised starting point for the Children's and News genres has no incremental short term impact on channels in these two genres, as the relative positioning of their channels in the listing remains the same until such point as new channels launch in the prior genres, and their LCNs are changing in any case.

We also proposed numbering the HD channels in line with their SD equivalents, at 101, 102 and so on. Allocating LCN positions 101 and 102 to the BBC HD channels, which have PSB status, provides them with the appropriate prominence at the head of the genre that they are entitled to under section 310 of the Communications Act. ITV HD will occupy LCN 103 and Channel 4 HD, LCN 104. This approach was supported by most respondents and DMOL confirms these decisions.

#### **2.4.1 The allocation of LCNs to future HD channels yet to be launched**

Some respondents asked what principles DMOL would use to allocate LCNs to the HD version of Channel 5 and to other HD channels which have not yet launched on the DTT platform, including potentially HD channels whose content would place them in genres other than General Entertainment.

A number of factors might impact DMOL's approach to this issue. These include firstly the number of HD services which are likely to be available on the platform and in consequence

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<sup>5</sup> <http://stakeholders.ofcom.org.uk/consultations/uhf-strategy/>

the relatively limited range of LCNs which has been set aside for this genre. We anticipate that in a three to four year time frame there are likely to be no more than about 15 HD services on the DTT platform, even if the 600 MHz spectrum band is used for the delivery of HD DTT services. Second, there is the possibility that further HD channels entitled to appropriate prominence might be launched on the platform, if, for example, the BBC decided to make existing standard definition channels available in HD form. DMOL could consider reserving appropriately prominent LCNs for such services. A further factor is that of viewer expectations, which might lead viewers to expect that HD channels would be organised in the same order as their standard definition equivalents.

There are a number of possible alternative approaches to ordering new HD channels on the platform, including the consideration of how any future HD channels entitled to appropriate prominence under section 310 CA might be positioned. It is likely that DMOL will consult on this specific issue at a later date. We will also consider the issue of SD/HD LCN swaps as part of that consultation.

## **2.5 Decision on the Children's and News genres**

Most respondents who commented on these genres recognised the necessity of moving these genres to make room for an expansion in general entertainment services and supported DMOL's proposal to move both genres to new LCNs while retaining the existing order of the genres.

DMOL has decided to maintain the existing genre order and to move these two genres together as a 'unit', with news acting as a buffer genre for consumer protection purposes, preventing children from scrolling up from channels that are attractive to them, directly into the Adult genre, a genre whose content could raise consumer protection issues.

There are currently three children's channels on the platform. We do not expect a significant increase in the demand for children's channel LCNs and believe that the existing size of the genre range, at ten LCNs, is adequate. By contrast, the news genre is relatively full and a further news channel LCN has been allocated since the consultation was published. We therefore consider it necessary to expand the News genre range from 10 to 20 LCNs and this has contributed to the decision to move the Children's and News genres to a position after the new position of the HD genre, where the 30 LCNs required can be accommodated.

We considered but rejected a 'least change' option of leaving News at LCN 80 and moving the Children's genre to LCN 90. This does not allow the News genre to be expanded and risks the need for a further reorganisation of the LCN listing if demand for news LCNs exceeded the ten available. A broken News genre, and/or a further reorganisation of the LCN listing could cause uncertainty for existing news channels, and also increase risk, for new news services expecting to launch on the platform and could therefore reduce consumer choice if it made their launch less attractive. This approach would also have changed the order of the genres and could be more confusing to viewers of the HD and Children's genres who would have to scroll through additional genre(s) in order to reach the channel they are seeking.

While our decision means that all children's and news channels' LCNs will change, is no immediate impact on viewers who scroll to the channels since any empty LCNs in General Entertainment and all other preceding genres will be closed by Freeview televisions and boxes and are not displayed to viewers. Viewers who scroll through the channels will therefore initially find the children's and news channels in the same position in the channel listing as they are today – albeit with a new LCN. Viewers will then have the opportunity to adjust to the new LCN over time, as any new channels gradually arrive in the preceding genres. Viewers of the channels who access them by channel number will have to learn new LCNs. 24% of those surveyed by Kantar Media said that this was how they most often found their channels, and 35% said they used this method regularly.

Given the unique characteristics of the children's audience, we are working with children's channel providers to adapt the communications messages, targeting them specifically for this particular audience to assist children in learning the new LCNs. DMOL's communications plan and proposed navigation improvements will also assist viewers generally in accessing channels in their new positions and learning the new LCNs. Section 3.3 details the communications plan for the changes. These measures to assist viewers, together with the fact that in the short term the order of the listing ahead of these genres is substantially unchanged should help to mitigate any economic impact of the change on news and children's channel providers.

DMOL has therefore decided to move the Children's genre to LCNs 121 to 130 and the News genre to LCNs 131 to 150.

In the course of the process of moving the News genre, DMOL is proposing to close up the gap currently at LCN 86, which is vacant, by moving up the news channels currently at LCNs 87 onwards to occupy the vacant LCNs. Annex 2 shows the outcome of this process. This process is subject to agreement from the channels which are being moved, who are asked to contact us to confirm their agreement. This means that with effect from the publication of this statement, vacant unallocated LCNs in the News genre are not available for the launch of associated channels.

## **2.6 Decision on the Abolition of the dedicated Local genre**

Since the consultation was published, preparations for the launch of new local services have continued along the lines anticipated, and applicants are currently preparing their applications. We consider that the planning assumptions set out in the consultation document remain valid and have based the decisions set out in this statement on the same assumptions. While the local Channel M services in Manchester have been shut down since March, the inter-leaved spectrum remains in the hands of Channel M's former owners and is tradable. We continue to believe that our proposals for the local genre need to take into account the availability of three video-streams on the nationally available multiplex (one of which will carry the section 244 local service and two of which are likely to carry services which will be available on a quasi-national basis throughout the coverage area of this multiplex) and of up to six video-streams on the multiplexes potentially available in

Manchester and Cardiff. This will also allow room for the three video-streams which will be available on the Northern Ireland multiplex.

Most respondents to the consultation agreed that the Local genre should be abolished and the services incorporated into the relevant content-based genre; this view was supported by all the prospective local TV providers. However, some respondents did argue for the retention of a dedicated local genre, believing that the proposal to include local services within the General Entertainment genre was a contributory factor to pressure on the genre size and led to the need to move the Children's and News genres. However, we have shown in section 2.3 that future capacity developments and the demand for general entertainment LCNs mean that on a realistic 'worst case' scenario the Children's and News genres must be moved, even excluding the LCNs which may be needed for general entertainment type services carried on locally available multiplexes.

COBA suggested that most demand for local services was for news and information services which should best be included in the News genre. If such a service did match the genre definition of the News genre, rather than General Entertainment, then we would expect the service to be included in the News genre, however that judgement cannot be made ahead of seeing the service itself.

DMOL is therefore confirming our proposal to abolish the dedicated Local genre and to include such services in the relevant content based genre as this better aligns with consumers' wish to see channels arranged according to their content. DMOL will allocate such LCNs on a first come first served basis, except that, in order to conserve LCNs, once an LCN has been allocated to a service which is available in only a part of the country, we will re-use this LCN for other locally available services which launch subsequently in other parts of the country. This approach allows us to limit the number of LCNs used for local services and hence to manage the size of the General Entertainment and other genres.

We believe that the decision to include local services in the relevant content based genres will have little impact on channels in the General Entertainment or other genres. If a general entertainment channel has already launched, their LCN number and relative position will be unchanged with the exception of the local service with PSB status (see below). As set out above, new local services which fall into the General Entertainment genre will be assigned LCNs on a first come first served basis alongside new general entertainment services.

DMOL believes that the abolition of the local genre and incorporation of such services into the relevant content genre will promote diversity of the service offering on the DTT platform and enhance consumer choice.

On the assumption that the content of many local services will result in their inclusion in the General Entertainment genre, DMOL's decision does tend to increase the size of this genre and contributes to the need to move the Children's and News genres. However, as shown in section 2.3, given the need to allow for a realistic 'worst case' view of future demand, we believe it would be necessary to move these genres irrespective of whether or not the Local genre was being abolished, as the demand for General Entertainment LCNs could exceed the capacity of LCNs 1 to 69.

## 2.7 Decision on ‘Appropriate prominence’ for local services with PSB status

DMOL’s decision on the allocation of LCNs to local services with PSB status under section 310 of the Communications Act was published on 6 July 2012<sup>6</sup>. At the request of Ofcom, this early publication was in order to assist bidders preparing their local TV licence applications with the preparation of their business plans by setting out the LCNs which will be allocated to the local PSB services. For completeness, the relevant text from that decision is reproduced below in sections 2.7.1 and 2.7.2.

Most respondents including some prospective bidders for PSB local services in England and Northern Ireland supported DMOL’s proposal to allocate LCN 8 to these services in these nations. However, Channel 6 called on DMOL to displace an existing service in order to allocate a lower LCN (LCN 6) to the PSB local service. Prospective bidders in Scotland and Wales, and others, did not consider that LCN 45 was appropriately prominent for the new local services in those nations. The Scottish Government also called on DMOL to displace an existing service in order to allocate a lower LCN to the PSB local service in Scotland and suggested that an LCN position in the top 20 would be appropriately prominent.

### 2.7.1 The LCN for the new local PSB in Scotland and Wales

Some respondents felt that LCN 45 would affect the commercial viability and subsequent success of the local PSB service in Scotland and Wales, and that distinction should be drawn between the BBC PSB services and commercial PSBs. DMOL does not recognise any distinction between commercial and BBC public service channels, and is not required to by any legislation or regulation on this matter. With regards to the comments about the commercial viability of the local PSB in Scotland and Wales we cannot assess the claim made as no data was provided to substantiate this argument. More than 120 commercial services operate on the platform, but we recognise that there is likely to be commercial advantage associated with a lower LCN.

Some respondents felt that there was no sound basis for DMOL only allocating vacant LCNs to the new local PSB services. One suggested LCN 6 be made available (moving ITV2 and subsequent ITV channels); another suggested a space be made within the top 20 channels.

Neither our current nor proposed new DMOL LCN Policy permit us to take an LCN allocated offer it to a service entitled to appropriate prominence. This is a position which is consistent with the policies of the other major UK TV platforms and the Ofcom EPG Code.

Notwithstanding the importance of a clear application of the pre-existing LCN policy DMOL has considered the implications of moving an incumbent channel to make way for the new local PSB service. We note that the historic application of the DMOL LCN Policy – which generally places new services at the next available LCN at the bottom of their genre – has resulted in those channels which joined the platform very early in its life being assigned low

<sup>6</sup> The interim statement can be found at: [http://www.dmol.co.uk/\\_data/assets/pdf\\_file/0005/78116/Interim\\_Statement\\_on\\_LCNs\\_for\\_Local\\_PSBs\\_FINAL.pdf](http://www.dmol.co.uk/_data/assets/pdf_file/0005/78116/Interim_Statement_on_LCNs_for_Local_PSBs_FINAL.pdf)

LCN numbers. Beyond channels one to five the list of the top 20 LCNs includes the BBC's PSB digital channels and a mix of commercial channels from a range of different channel providers including ITV, Sky, Channel 4, QVC and UKTV.

We do not consider it fair and reasonable that ITV alone – by virtue of its early investment in Freeview and its allocation of LCN 6 for ITV2 – should absorb the full impact of any channel moves. Although this is not the basis of our decision, we also note that it would be extremely confusing for viewers if a channel available on a nationwide basis was found at different LCN numbers in different parts of the country.

An alternative way of creating space would be to 'shuffle down' each of the 39 channels from LCNs 6 to 45, maintaining their existing order in relation to one another, which we feel would entail very considerable change and disruption to both viewers and channel providers. We note that one respondent felt that DMOL's research suggested that viewers would find no problem with such extensive changes to the channel listing. We do not agree that this is the conclusion the research draws. While Kantar demonstrated that *most* would adapt easily to changes, this is not true of *all* (we would expect older and more vulnerable people to cope less well with such large scale changes), and we did not test this mass movement of the most popular channels in our research.

Our conclusion is that moving incumbent channels to make way for a new local PSB would precipitate significant change and disruption for both a large number of channels (who invest in promoting their channel number) and probably all DTT viewers, given the viewing share of the channels that would be moved. As such DMOL does not believe that it would be proportionate to propose such a change, contrary to the clear and long established provisions of the policy.

Some responses also questioned the basis and resulting impact of assigning a different LCN in Scotland and Wales to that assigned in Northern Ireland and England. Given the practical challenge of differing LCN availability in different parts of the UK DMOL has considered whether it is more important to:

- i. Achieve parity between the nations (i.e. assign identical LCNs in all of Scotland, Wales, Northern Ireland and England); versus
- ii. Ensure that the lowest LCN is assigned in each area.

DMOL's view is that we will go further to meet the 'appropriate prominence' requirements of the Ofcom EPG Code – and it would be better for the future of local television - for the lowest LCN to be assigned in each area; accepting that this might mean that different LCNs are used in different areas. We also note that local services are by definition only available in a part of the country, and we see no particular value in ensuring that all local services have the same LCN.

A final consideration is whether such change and disruption would be necessary given the requirements of s.310 of the Communications Act (2003) and the Ofcom EPG Code. A number of the responses suggested that that DMOL's proposals did not afford the new local PSB in Scotland and Wales the 'appropriate prominence' required for PSBs under the Ofcom EPG Code for all s.310 CA listed services. One appeared to go further and

suggested that not allocating LCN 6 to the new local PSB would be in breach of the EPG Code.

DMOL believes its LCN Policy is consistent with the Ofcom EPG Code, and does not agree that not allocating LCN 6 in any way contravenes the Ofcom EPG Code. The Code is quite clear that ‘appropriate prominence’ *“permits a measure of discrimination in favour of PSB channels”* – i.e. does not require absolute discrimination in favour of PSB channels such as the proposal to assign LCN 6 or a position in the top 20 channels – and *“does not propose to be prescriptive about what appropriate prominence means”* so long as the approach is *“objectively justifiable”* and meets Ofcom’s guidelines contained in clauses 3a-c. DMOL has provided a clear and objectively justifiable explanation of how ‘appropriate prominence’ will be granted in its draft new DMOL LCN Policy (V5).

DMOL considers that our proposal that any public service channel at the next highest LCN (i.e. lower EPG position) should be offered first refusal on any lower LCN that become available - providing a mechanism for the elevation of public service channels over time - explicitly meets the suggestion made in section 4 of the Ofcom EPG Code that the principle of EPG prominence *“might...justify giving public service channels first refusal on vacant listings higher in the category that they were placed”*.

As proposed in the consultation DMOL has decided to provide appropriate prominence for the PSB local services by reserving the lowest available vacant LCN. This is LCN 8 in England and Northern Ireland and currently LCN 45 in Scotland and Wales.

## 2.7.2 The LCN for TG4 in Northern Ireland

DMOL received a large number of responses from viewers of the Irish language service TG4 and from some Northern Ireland Assembly members and organisations in Northern Ireland. This was a campaign organised by TG4 viewers and the responses argued that due to TG4’s unique content offering and its support from the UK government, TG4 is in effect the Irish language public service channel in Northern Ireland. As such, it should be considered to be like S4C and BBC Alba, and, like them, should be allocated a single digit LCN on DTT in its territory, Northern Ireland.

We understand the importance that many in Northern Ireland attach to TG4 as an Irish language channel, and know that the UK Government is committed to working with RTÉ and TG4 to increase the availability of TG4 on digital terrestrial TV (DTT) in Northern Ireland at switchover. However TG4 is not listed as a UK public service broadcaster (PSB) under the provisions of section 310 of the Communications Act (2003), and is not therefore entitled to ‘appropriate prominence’ on the EPG under the Ofcom EPG Code.

S4C in Wales and BBC Alba in Scotland are currently listed at LCNs 4 and 8 respectively. Both of those channels are listed under the provisions of s.310 of the Communications Act and are therefore eligible for ‘appropriate prominence’ on the EPG in a way that TG4 is not. Without the benefit of s.310 listing DMOL must treat TG4 as we would any other service launching on the platform in order to maintain our obligations to treat channels in a fair,

reasonable and non-discriminatory (FRND) fashion – as also required by the Ofcom EPG Code.

Reflecting the above, the implication of the wider LCN Consultation proposals suggest that TG4, RTÉ One and RTÉ Two – all of which will be carried on the new Northern Ireland multiplex - would be allocated LCNs in the first available slots at the end of the relevant genre – as and when they apply for those LCNs at any time from three months prior to their intended launch date.

## 2.8 Decision on the Adult genre

In the consultation document published on 29 March 2012, DMOL proposed to re-unite the Adult genre and to position it at LCNs 300 to 349, after the Text and MHEG services genre.

In an interim consultation, published at the same time, DMOL proposed to re-unite the Adult genre for consumer protection reasons and to position it at LCN 91 on a temporary basis. We also proposed to move the local services on the platform to LCN positions ahead of the Adult genre, again for consumer protection reasons. This decision was implemented during April and the Adult genre is now positioned at LCNs 91 to 100. This LCN range is currently fully occupied, including the bookends at front and end of the genre, meaning that there is no room to launch further adult services.

The great majority of responses to the consultation agreed that the Adult genre should be reunited and positioned well away from content that is attractive to children, with suitable protections in place, both buffer genres and bookends. However, there was not a consensus from respondents on where the Adult genre should be positioned, with some respondents silent on the matter, some arguing that it should be positioned before the Text genre, some for positioning it after Text and some even further down the listing.

One respondent objected to any carriage of adult services on DTT. However, DMOL does not control what content is available on the platform, including what lawful adult content may be available. This is a matter for the multiplex operators, whose licences contain provisions requiring fair and effective competition to ensure that they do not discriminate against individual services or services of a particular type. They therefore have an obligation to allocate capacity on a non-discriminatory basis, irrespective of the content of services, provided they are lawful. We do however, recognise the consumer protection issues which are presented by the presence of adult content on the platform and take measures to protect against inadvertent viewing of inappropriate content, particularly by children, through the positioning of the genre, the Adult prefix to all channel names and the bookends, together with the re-uniting of the genre implemented on 16 April 2012.

Other responses pointed out that it was likely in future that both MHEG delivered and IP delivered services might include adult services and DMOL needed to consider the consumer protection implications of this. An adult service provider argued that any further move of the genre, after the interim move, would cause it significant economic damage, citing the damaging effects of previous LCN changes.

Having carefully considered all the responses to the consultation, DMOL has decided that the Adult genre must be moved from its current interim position at LCNs 91 to 100. As explained above, this number range is full which prevents further launch of further Adult services on the platform (unless the genre is again broken, which would be highly undesirable). The number range LCN 91 to 100 will also in future be located in the middle of the television services, between the General Entertainment and HD genres. This is not acceptable from a consumer protection perspective, a position that is supported by the regulator. While DMOL recognises that a further move of the genre might have some revenue impact on Adult channels whose LCNs change, we consider that consumer protection reasons, together with the need to allow room for the expansion of the General Entertainment and Adult genres, make it essential to make the change.

### **2.8.1 Decision on the relative positioning of the Adult and Text and MHEG services genres**

Adult service providers in their responses pointed out that the main part of the Adult genre had in the past (as today) been positioned after all other television services (except Local services) but ahead of the Text genre and argued for the maintenance of this relative position. Having concluded that the Adult genre must be moved, we therefore considered whether it should be positioned as proposed in the consultation, after the Text and MHEG services genre, or, as it is now, ahead of Text and MHEG services.

In considering the relative positions of these two genres, DMOL has considered the impact of its decision on consumers, both in terms of the viewer experience of scrolling through the LCN listing, given that there are a large number of consumers who use this method to access channels, and also in terms of consumer protection. We have also considered the impact of the decision on channel providers in the two genres.

#### **2.8.1.1 Impact on viewers**

It was suggested to us in consultation responses that significant growth was likely in the Text and MHEG Services genre and that we should allow for this significant growth. Linking from a broadcast MHEG application to a service delivered via broadband is an alternative route to deliver channels to any connected device. We understand that more than 5 million connected TV devices have now been sold and that this market is developing rapidly. DMOL has no means of knowing how many of these devices have actually been connected to the internet, but believes that the proportion is currently quite low. If connected to the internet, the connection to the broadband delivered channel is made by a broadcast MHEG application which is initiated when the relevant LCN is accessed. Viewers who own connectable equipment, and who have connected it, access the channel or a portal to multiple channels as they key in the relevant LCN or scroll to it. Viewers whose equipment has not been connected, as well as viewers who have equipment which is not capable of being connected, see the static slate on their screen when they key in the relevant LCN or scroll to it, but are not able to receive the channel. However, because the relevant LCN is 'occupied' by a broadcast MHEG slate, non-connected equipment does not close up the

LCN; a scrolling viewer must scroll through it. Although DMOL does not know how many devices capable of being connected to the internet have in fact been connected, we do know that the great bulk of the consumer equipment used today to receive DTT is not capable of connecting to the internet and this will remain the case for some time. This means that as the number of MHEG delivered services grows, the great majority of viewers who do not have connected equipment will have to scroll through an increasing number of LCNs which access only an MHEG slate, leading to what we consider will be a poor consumer experience for those unable to receive the internet delivered services.

DMOL recognises that historically the main part of the Adult genre has been positioned after all other television services and ahead of the Text genre. This, relative position, combined with the other measures such as buffer slates, was considered to provide an acceptable level of consumer protection, provided that there was a buffer genre in place between content attractive to children and the adult content. Irrespective of the positioning of the Adult genre, we intend to maintain the existing consumer protection measures of bookends at the start and finish of the genre, a buffer genre between children's content and the Adult genre and the naming convention for adult chat channels.

Positioning the Adult genre behind Text has the disadvantage that while DMOL allocates LCNs to MHEG delivered services, we cannot control what service(s) the MHEG service provider links to the allocated LCN. At present these are a range of niche services – foreign language channels, news services and horse racing – but we have no special insight as to what services may be distributed in this way in future. We have concluded that from a consumer perspective it is undesirable to put Adult behind an emerging genre (MHEG services) which is likely to grow fast and whose channels can currently be accessed by only a small minority of DTT viewers.

### ***2.8.1.2 Impact on channel providers***

There are eight adult services on the DTT platform today and 15 text and MHEG delivered services. There have been limited fluctuations in the size of the Adult genre over the past several years, but as set out above, consultation responses suggest that significant growth is likely in the Text and MHEG services genre, because this represents an alternative way of distributing services to the growing number of consumers with connected boxes.

None of the providers of adult or text and MHEG services provided us with any information on how its customers accessed the channel, and our research was not able to identify the channel seeking behaviour of viewers of particular genre types. If the behaviour of viewers of these genres was similar to that of the population as a whole we would expect a significant number of viewers to scroll to the channels. However, since these services are generally niche in nature with strong appeal to a limited part of the viewing population and since they have historically been positioned at relatively high LCN numbers, one might expect that these channels' viewers are more likely than the population as a whole to know the channel numbers and access their content directly by LCN or using favourites. Nevertheless, DMOL has considered the position of viewers who access the channels by scrolling and the impact this may have on the service providers.

Scrolling viewers accessing whichever of the two genres is positioned second will have to scroll through the channels in the earlier genre. DMOL considers that scrolling through a large number of MHEG slates would be a poor consumer experience for any viewer. Today the two genres are of similar size; however, as set out above, we expect faster growth in the Text and MHEG services genre than in the Adult genre. Over time therefore, the viewers of adult services might be expected to have a worse consumer experience in accessing the channels if Adult was the second of the two genres than the viewers of text and MHEG services would have if Text was the second of the two genres. This might translate into a worse economic impact for the Adult channel providers.

## 2.8.2 Conclusions on the Adult genre

DMOL has concluded in light of the consultation responses and the factors set out above that there are not adequate reasons to justify a change from the historic genre order. For the reasons set out above, we have therefore decided to make a change from our consultation proposal and to maintain the Adult genre in the same relative position as it occupies today, as the last genre of television services and ahead of the Text and MHEG services genre. The genres will remain in the order that consumers today would expect to find them in. LCNs 171 to 198 will be allocated to the Adult genre. Channels in the genre will be positioned in the same order as they are today. We will maintain the system of bookends at start and finish of the Adult genre and the naming convention for adult chat channels in the LCN listing.

The move of the genre, from the position in the 300's consulted on to LCN 171, means that only 28 LCNs (rather than the 50 LCN range consulted on) are available for this genre. We believe however, that a 28 LCN range should be sufficient to meet the anticipated demand for LCNs for this genre.

DMOL recognises that this move and change in LCNs for the genre may have economic impacts on some Adult services. However, having weighed up the arguments for leaving the Adult genre in its previous or its temporary LCN position, we consider that the change of LCNs is required for consumer protection reasons given the growth anticipated in the other television genres.

As pointed out in the consultation document, DMOL believes that many viewers of adult services who transact with the services and on whom the channels' economic models depend will learn the new LCNs and seek out the services at their new LCNs. However, DMOL has also tried to mitigate the impact of the LCN change. In the short term until significant numbers of new channels launch, the number of services ahead of the new Adult genre LCN positions will be substantively unchanged, with genres (other than Local) in the same order as they are today and the Adult genre positioned as the last of the TV genres. Access for scrolling viewers will therefore not be significantly affected. There are at present no local services available on the DTT platform. While our decision to position local services within the relevant genre based on their content means that local television services will be positioned ahead of adult services, in most areas there are likely to be no more than three or so such services available on the nationally available local multiplex.

Our proposals to aid navigation on the platform will help viewers find adult content if they want to see it and thus help to mitigate any impact on the Adult channel providers. We will also include information relevant to the Adult genre in the communications plan.

## 2.9 Decision on the Text and MHEG services genre

The Text and MHEG services genre is currently positioned at LCNs 100 to 120. DMOL's consultation proposals required the genre to move and proposed positioning it ahead of the Adult genre. Section 2.8.1 above sets out the reasons for our decision to move away from the consultation proposal and to position the Text and MHEG services genre after adult services, in relative positions unchanged from today. The remainder of this section deals with other matters related to this genre.

There was general support in consultation responses for the separation of the genre into Text services and MHEG delivered services. As set out above, MHEG delivered services are likely to become increasingly common on the DTT platform as the number of connected TVs and set top boxes increases, as they require a very limited amount of broadcast DTT capacity and potentially therefore offer a low cost means of accessing the platform. Because each MHEG delivered service is accessed via a broadcast MHEG application, all TVs and set top boxes, whether capable of connecting to the internet, and whether actually connected or not, 'see' the LCN as carrying some content. They do not skip the LCN as they would an unoccupied LCN. DMOL allocates the next available LCN in the relevant genre range to each MHEG delivered service. However, the broadband delivered channel or channels associated with each LCN could be of any content genre – DMOL is simply allocating an LCN to an MHEG application which is content genre neutral. Today there are MHEG delivered services on the platform giving access to a variety of niche channels.

As well as signposting the likely growth in in this genre, some consultation responses pointed out that it was likely in future that MHEG (and IP) delivered services might include adult services and DMOL needed to consider the consumer protection implications of this. An adult content provider argued that positioning the Text genre ahead of the Adult genre creates the risk of a competing adult service being launched in the Text and MHEG services genre and 'leap frogging' the LCN positions of the existing adult services on the platform. We do not agree that this is a significant risk. We would point out that, irrespective of the relative positions of the Adult and Text genres, the hierarchy of genre definitions included in section 3.8 of the new Version 5 of the LCN Policy gives DMOL the discretion to put any service providing adult content into the Adult genre. We would expect to exercise this discretion if we had concerns about the consumer protection implications of the position of any service providing adult content in the LCN listing.

Some respondents argued that MHEG delivered services which link to content corresponding to particular genres should be positioned within their relevant genre and not in a separate genre based on their delivery method. (A similar argument was made with respect to IP delivered channels.) As set out above, MHEG delivered services are only available to connected TV equipment. DMOL has no specific insight into the likely demand for MHEG delivered channels (or IP delivered channels) by genre. We understand that

approximately 5 million connected TV devices have been sold, but believe that few of these devices have actually been connected to the internet. In the case of IP delivered channels a proprietary set top box will be able to determine the order in which channels are presented to the viewer. By contrast, MHEG delivered services are available on any connected TV or set top box and are presented in the order of the LCNs.

DMOL has decided that, while these areas of the market develop and while the penetration of HD and connected boxes is relatively low, there should be a separate genre for MHEG delivered services. Our reasons are, first: at this stage of the development of this market it is not possible to predict the likely numbers of MHEG delivered services which will fall into particular content based genres, indeed as niche services they may not correspond closely to any genre currently available on the DTT platform. It would therefore be extremely difficult to predict how many extra LCNs to allocate to each genre to provide room for future MHEG delivered services. Wrong predictions could lead to genre overflows or to the 'sterilising' of large numbers of vacant LCNs. Second, organising the services in a dedicated genre will help preserve the viewing experience of the majority of viewers who do not have connected devices and are therefore unable to access MHEG delivered services. Because the LCN is occupied by an MHEG application, consumer equipment does not 'see' these LCNs as vacant and does not close them up. A scrolling viewer would have to scroll through the MHEG slates at every LCN assigned to an MHEG delivered service. It would be detrimental to the viewing experience of viewers who do not have connected equipment if, within or at the end of each television genre, they had to scroll through the MHEG slates linking to a large number of services that they cannot access.

Some prospective providers of IP services argued that the Text and MHEG services genre should be positioned after the LCN range allocated for IP delivered services and not ahead of it. We have considered this argument, but rejected it for the reasons set out below in section 2.11 on IPTV services.

Considering the likely demand for LCNs in the genres ahead of Text and the desirability of assigning a memorable range of LCNs to Text Services, DMOL has decided that Text service LCNs will be allocated LCNs from 200 to 224 and MHEG delivered services from 225 to 299.

LCN 101 is currently the first LCN of the Text genre (occupied by Teletext Holidays). The BBC red button service is positioned at LCN 105. Given that this BBC service has PSB status, and in keeping with our LCN policy of offering the lowest vacant LCN in the relevant genre to services with PSB status, the BBC red button service will move to LCN 200 at the head of the Text genre. All other Text and MHEG delivered services will remain in their current order, but the move of the BBC service to LCN 200 creates a vacated LCN within the LCN sequence. There is also currently a vacated LCN at 107. We propose to close up these vacated LCNs by moving up the text services which currently occupy LCNs after the BBC service, namely Mail Travel and Sky Text. This move will be subject to the agreement of the relevant service providers, as per paragraph 8.7 of new DMOL LCN Policy. This means that with immediate effect, LCN 107 will no longer be available for the launch of an associated channel.

Since the first Text genre LCN position was occupied by Teletext until the end of 2009, and the content of the BBC red button service is very different to the content of any of the other text services on the DTT platform, we consider that this move up the LCN listing for the BBC text service is unlikely to have an adverse impact on the other text services currently ahead of it. The move is in any case consistent with DMOL's LCN Policy.

We recognise that the change in LCNs may have some impact on services in the Text genre and aim to assist viewers through the transition through our communications plan for the rearrangement and with the navigation improvements we aim to make. These measures are intended to help mitigate any impact on channel providers. While DMOL has no information on the particular methods that viewers of these services use to access them we also believe that transacting users of text services are likely to seek out the content that they want at the new LCN. MHEG connected services are generally niche in nature and we expect that viewers (some of whom are also subscribers) to their particular services will seek them out in their new LCN positions.

## **2.10 Decision on Interactive services**

Most respondents who commented on this genre supported DMOL's proposal to position the genre after the Text and MHEG services and Adult genres.

However, given the decisions on genre LCN ranges set out earlier in this statement, there is no longer any need to move the Interactive services genre from its current position at LCN 300. We have therefore decided to amend our proposal and to leave the services at their current LCN positions of 300 onwards and in the same order as currently. The decision will have no impact on other genres as the relative position of this genre is unchanged.

As part of the overall implementation process, we propose to close up the current gaps in the LCN listing at LCNs 303, 305 and 308. Interactive services will be moved up to close the gaps. This is subject to the agreement of the service providers concerned, as per paragraph 8.7 of new DMOL LCN Policy.

## **2.11 Decision on IP delivered services**

Most respondents who commented on this genre supported our proposal to set aside a range of LCNs for IP delivered services. However some questioned whether DMOL should allocate LCNS to individual IP delivered services. In response to this point, DMOL clarifies that we do not propose to allocate LCNs to individual IP delivered services but simply to set aside a range of LCNs and ensure that they are not occupied by broadcast services. IP service providers will be able to allocate these LCNs to services on their platform in any order they wish.

All the prospective IPTV providers argued that 100 LCNs would be inadequate to accommodate the number of IP services that they anticipated would be made available via DTT connected boxes and argued that DMOL should allocate 200 or even up to 300 LCNs.

At this point, we see no need to set aside a range of more than 100 LCNs. However, we note that there are more than 100 further vacant LCNs available between the proposed 400-499 range set aside for IP delivered services and the LCN range used for radio services. DMOL will keep the number of LCNs allocated to IP services under review as this market develops and we will be able to allocate an additional LCN range if required, without any impact on other services on the platform.

Some IPTV providers also argued that as IPTV services are ‘mainstream’ television services, the range of LCNs set aside for IPTV services should be located before and not after the LCNs allocated to Text and MHEG services. DMOL has considered this point but rejected it because, first, we anticipate that the proprietary consumer equipment offered by IPTV providers will be able to arrange services according to their genre or other characteristics making the specific LCN numbers allocated to IP delivered services less relevant. Second, IP service providers argued in their responses that there would be significant growth in the number of services available on their platforms and estimated variously that from 200 and up to 300 LCNs could be required. Given the degree of uncertainty in the number of LCNs required, and in order to avoid sterilising large numbers of vacant LCNs, we consider that it would be preferable to position the LCN range reserved for IP services after Text and MHEG services, with adequate room for expansion, should this be necessary. IPTV viewers will not have to scroll through LCNs which are occupied only by MHEG slates to reach the IPTV genre, since their boxes must be connected to the internet in order to access IP services and will therefore be able to access the channels linked to the MHEG applications. As suggested above, we also expect the providers of IPTV services to use the software in their devices to organise the services available, reducing the need to scroll as a means to access services.

One prospective IPTV provider also suggested that rather than allocating a single range of LCNs to IP delivered services DMOL should allocate a series of smaller ranges at the end of each of the relevant television genres, General Entertainment, HD, News, Children’s and Adult, and proposed a new LCN numbering scheme to achieve this. We understand the attraction to IPTV channel providers of having their services listed within the genre most appropriate to their programming. However doing this would require DMOL to predict the demand for both broadcast and IP delivered LCNs by genre and then to set aside an LCN range of the right size. At this very early stage of development of the IPTV market DMOL has no insight into the likely future demand for IPTV LCNs in total or by genre. It would therefore be extremely difficult to predict how many extra LCNs to allocate to each genre to provide room for future IPTV delivered services. Wrong predictions could lead to genre overflows or to the wastage of large numbers of vacant LCNs.

We understand that the software within proprietary IPTV set top boxes is likely to be able to display channels grouped into genres, irrespective of whether the channel is broadcast or IP delivered, and that consumers are likely to be able to access services directly from this genre based EPG display. In our view this is a better route to achieving genre based organisation of the services on IPTV equipment than for DMOL to try to predict the size of each genre and assign LCN ranges accordingly.

We may however return to this issue in a future review once it becomes clearer how the IPTV market is developing.

## 2.12 Decision on the Radio genre

As set out in the consultation, we do not intend to make any change to the LCNs of radio services as a result of this review.

## 2.13 Response to other issues raised in the consultation responses

### 2.13.1 Impact Assessment

Some of the responses called for DMOL to undertake a full impact assessment of the effect of its proposals on individual genres and channels on the DTT platform. Another called for DMOL to provide an impact assessment showing the effect of its proposals on channels owned by the DMOL shareholders. As set out in section 4 of the consultation document, DMOL did not have the evidence available to it to enable us to model the impact of our proposals on individual channels or genres. This is equally the case for channels owned by DMOL's shareholders. In the consultation, we asked respondents to provide us with evidence on the impact of our proposals. Some respondents declined to do so while others provided pieces of evidence without the detail that would allow a quantified impact assessment to be undertaken. Although DMOL remains unable to produce a detailed impact assessment of the effect of our proposals on all of the services on the platform or of their effect on shareholder channels specifically, we do recognise the general correlation between the position of a channel's LCN in the LCN listing and the channel's performance. The discussion in this statement of the reasoning behind DMOL's decisions incorporates a qualitative assessment of the impact of our decisions on some genres where possible and relevant. We also note that it is not common practice for consultations on changes to the EPG on other platforms to include a separate impact assessment.

### 2.13.2 Research

Some of the responses raised issues relating to the research. A respondent opposed to the proposals being made by DMOL believed that the consumer research and its interpretation were flawed. It had commissioned a critique of the research which made a number of points: that the qualitative sample was too small and un-representative, it had been used excessively to interpret the quantitative research; the presentation of the quantitative data was biased; there was no explanation of why and when the seventh wave of research was conducted; the critique questioned the analysis of the quantitative research into different age brackets. The respondent concluded that the research had failed to meet its objectives, had been conducted without collaboration with independent channels and should be redone.

DMOL commissioned the research from Kantar Media, a well-known, independent research organisation with considerable experience in the broadcasting field, which devised the methodology used and determined the sample sizes in accordance with Market Research Society best practice. We accept that the qualitative sample was small – as set out in the

research methodology, its purpose was to gain some understanding of current attitudes and behaviours and to undertake cognitive testing of the quantitative research questionnaire. While we have used the results of the qualitative research in some areas to help interpret the quantitative results, we do not consider that our decisions depend on the qualitative research; rather they are based on the results of a very large quantitative sample. Neither do we accept that the research results were presented in a biased manner – the report emphasises which of the differences seen between the waves in the quantitative research were statistically significant and at what level. Where the research report dealt with the behaviour of different demographics or the response of different demographics to the different concepts, the quantitative results were presented for all the measured demographics. In the text of the Kantar authored full report however, some age groups were grouped for the purposes of interpretation. The consultation document and the research report both explain the purpose of the seventh wave and why it was commissioned separately from the first six waves of quantitative research.

Other respondents highlighted the high proportion of consumers who were indifferent to all of the concepts researched. DMOL accepts that the research suggests that channel listings are not at the forefront of viewers' minds and has recognised this, for example in our decision not to propose the creation of a dedicated Shopping genre, as the research results suggest that today the perceived consumer benefit from creation of the genre may be fairly small.

Nevertheless we consider that the research provides us with important evidence as to how people access channels on the DTT platform and how people would like the LCN listing to be arranged, which we have used in arriving at our decisions.

### **2.13.3 DMOL's use of the term 'genres' on the DTT platform**

Some channel providers challenged DMOL's use of the term 'genres' and the role that genres play on the DTT platform, arguing that they have little role given that there is no direct access to genres on the platform. Other respondents pointed out that although DMOL has interpreted the consumer research as suggesting that consumers want the services on the platform to be arranged according to their content, a number of the 'genres' on the platform are not in fact content based at all, citing radio, interactive and text services as an example.

DMOL accepts that not all the genres on the DTT platform are content based. Nevertheless, viewers of DTT spend the great bulk of their time watching the television services on the platform, which also have by far the highest reach, as shown in our research. These television services are arranged into content based genres – General Entertainment, Children's, News and Adult services. While HD is not a strictly content based genre, we consider that there is consumer benefit for those consumers who have invested in equipment capable of receiving HD services in enabling the HD services to be found easily and the dedicated genre also enables us to ensure that the PSB services are given appropriate prominence. Beyond the television services on the platform, the DTT genres are generally media based – Television services as opposed to Text and Radio for example.

While we accept that genres play a more limited role on the DTT platform today than on other platforms, as there is no direct access to them, we believe that there is value for consumers in assisting navigation by grouping channels with similar content together. In our view this is a preferable approach to simply allocating all LCNs on a first come first served basis. As suggested below in section 3.2, we aim over time to enhance navigation on the platform, and also the value delivered by genres, by working with manufacturers to develop approaches to enable consumers to access genres directly in future.

#### **2.13.4 DMOL's organisation and regulation**

These issues are dealt with and responded to in the section of the statement setting out our decisions on the LCN Policy.

### **2.14 Conclusion on the LCN listing**

A complete picture of the LCN listing that we have decided on can be seen in the table of genre ranges, Figure 1, in the executive summary of this document. Annex 2 also provides a full listing of LCNs by channel, as we expect it to look after the implementation of the decisions set out in this statement. Service providers are encouraged to check the listings of their channels in the Annex.

DMOL's decisions on the genre range to ascribe to each genre are final, as are our decisions on the positioning of services entitled to appropriate prominence. However, any channel provider whose LCN is changing as a result of moving up channels to close up vacant LCNs is encouraged to contact DMOL to confirm their agreement to the changes shown in the Annex.

## 3 Implementing the changes to the LCN listings

### 3.1 Introduction

In this section of the statement we set out how DMOL plans to improve the navigability of the DTT platform and how we will implement the changes to the LCN listing, together with our plans to communicate the changes.

### 3.2 DMOL's plans to improve navigability

The majority of respondents were supportive of efforts to improve navigation on the DTT platform, agreeing that this would become increasingly important in the future. Some felt that there was no evidence of current viewer concern about navigability, and suggested that DMOL should only take action when there is evidence of a navigation problem. Others felt that DMOL should leave navigation enhancement to DTT equipment manufacturers. Some felt that DMOL had overestimated the importance of genres and genre-based navigation on the platform.

We agree that viewers are not articulating a current concern about navigation, but we believe that the navigation challenge on the platform will only grow as more channels launch. We believe that it is responsible to plan for this future to ensure the continued ease of use, and hence competitiveness, of the platform. We continue to believe that DMOL should seek to improve the navigability of the DTT platform, working with Freeview, DTG and equipment manufacturers.

To this end DMOL will establish a Navigability Action Plan. As part of this work we will explore the measures that might be taken by DMOL to support navigability on DTT, but would also like to consider the developments that might be undertaken by equipment manufacturers. We would specifically like to explore with manufacturers how far genres might be accessed directly via their respective user interfaces. In our view, the end goal would be to deliver an experience akin to those available on other UK TV platforms, whereby a viewer is presented with a page of genres, can select a genre, and is taken directly into that genre. Our work in this area will be informed by the future scenarios that might play out on the DTT platform, including the anticipated growth in channels, possible changes in spectrum availability, and the advent of IP-DTT hybrid services.

On the specific proposal to create 'bookends' at the front of genres (other than General Entertainment) responses were generally negative. For some this conclusion simply flowed from their view that navigation is not an issue. Many were supportive of effort to improve navigation generally but were not supportive of the 'bookends' proposal specifically. This was for a range of reasons, including that there are too few channels or genres to merit them; that the slates would clutter the EPG and be detrimental to the viewing experience; that there is no evidence that they would improve navigation; that they might affect the capacity available on the platform; and that they could be confusing for viewers with sight or hearing impairments.

We will clearly retain the ‘bookends’ at the start and end of the Adult genre, in their current form, for consumer protection reasons. We will also continue to explore the feasibility of different approaches to improving navigation to other genres.

In the consultation we also discussed the possibility of creating an ‘information page’ at LCN 100 or similar that might list the channel numbers for the genres. Few respondents commented on this proposal (though, as described above, some felt that no navigation innovations are necessary). But those that did, felt that an information page might support navigation, and one respondent suggested that such a page could also carry platform information, such as re-tune events or channel launches.

DMOL’s view is that an ‘information page’ would be a small step towards supporting better navigation on DTT. Since genres could not be accessed from this page we believe that it is an inferior proposal to the longer-term development of a genre-based menu, but feel that it would help some viewers understand the channel listing, and so help discoverability of content. We agree that the page could also include helpful platform information. We are therefore confirming our intention to create an information page on a trial basis at LCN 100. The information page will be broadcast on Multiplex B where there is currently capacity available, pending the licensing of the fifth HD video-stream. For this reason the page will be available only to viewers with HD receivers or televisions. We aim to launch this trial at or around the time of the LCN rearrangement in September 2012.

### **3.3 DMOL’s communications plan**

Most respondents were supportive of DMOL’s proposed plan for communicating the channel number changes to viewers.

One respondent said that the communications plan was generally inadequate. The respondent felt that the PR plan was inadequate, and asked for more detail on the weight of the MHEG messages and on which channels they would appear. They also suggested that web advertising be used, and that information about the changes should be made available on the public service broadcasters’ websites. We believe that DMOL’s communications plan – on which we have provided further detail below – is sufficient given the viewer impact from our decisions described above. We expect that channel providers will wish to supplement this activity by promoting any changes to the channel numbers for their channels. We will encourage all broadcasters to promote the changes on their websites (and will provide a pack of materials for this). We do not find web advertising an effective means of reaching those who will need more guidance through DTT changes, who tend to be less tech-savvy and thus lighter web users. We further believe that the PR plan, supported by Freeview, will be sufficient to raise awareness of the changes, though we cannot guarantee how far the story will be picked up by the media.

One respondent asked that DMOL take into account the need to communicate to children who view channels in the Children’s genre. We will work with CBBC, CBeebies and CITV to adapt the core messages for a children’s audience. We expect that this children’s messaging might then be used by the children’s channels on air and on their websites.

One respondent noted that on-screen MHEG messages are not accessible to those who are blind or partially-sighted. The respondent suggested that the message should be spoken on air at specific points in time. DMOL will endeavour to generate media coverage of the channel changes, in press, radio and TV – though the story cannot be guaranteed to be picked up by media outlets. We would be very pleased to provide articles for charity and consumer group newsletters to raise awareness of the changes amongst disabled and vulnerable people, and to brief stakeholder contact centres as necessary.

Based on the consultation responses and our further work we have been able to develop and refine our communications plan, which will include:

- **PR** – A Freeview-branded press release to be issued in early September, approximately two weeks prior to the 19 September implementation date. This will be targeted to mainstream and specialist media.
- **MHEG messages** – On-screen messages will be broadcast across the two weeks prior to 19 September, on a frequency of two messages per week. This is an increased weight from the one week of messages proposed in the consultation. The messages will run on BBC One, BBC Two, ITV1, Channel 4 and BBC Parliament. The messages will enable viewers to press the blue button on their remote to click-through for more information about the changes, and how to re-tune. The messages can be cleared by pressing the yellow button. We will also run MHEGs during the two weeks after the changes are made.

Viewers in the Tyne Tees TV region will be excluded from this MHEG plan, since they will already be receiving MHEG messages encouraging them to re-tune for their switchover on 26 September 2012.

We were asked by some children's channel providers to run an adapted MHEG on the children's channels; in language which might be more appealing to children. Unfortunately it is not technically feasible to run a different message on these channels, but the message will be easy to understand by all.

- **NCNDs** – Network Change Notifier Descriptors are over-air triggers which instruct DTT equipment with assisted re-tune functionality to re-tune at the time the changes are made. We can now confirm that we will broadcast these invisible over-air signals for four weeks prior to the changes being made to ensure that all those with this equipment receive the trigger.
- **Crib sheet** – We confirm that we will prepare a crib sheet explaining why the changes are happening, and how to find your favourite Freeview channels.
- **Freeview website** – We confirm that information about the changes will be promoted on the Freeview, Digital UK and DMOL websites, and that these will point to pages with helpful advice on how to re-tune.
- **Advice Line** – We confirm that the Digital UK advice line will provide viewer support for these changes, using both agent support and its automated re-tuning instructions (which will particularly need to be used at peak times).

As noted in the consultation, channel providers are welcome to refer to the [www.tvretune.co.uk](http://www.tvretune.co.uk) website for re-tune assistance, but should not use the Digital UK advice line number as it will not be staffed to support third party communications campaigns. Digital UK does not handle calls directed to it by any third party, and will ask any channel provider or other party using its number on any communications to remove it immediately.

- **Trade Communications** – We will notify retailers, installers and manufacturers of the changes as this statement is published. We will issue a reminder closer to the time, in early September. We note that one respondent felt that trade communications were worthless, since trade would know about the changes anyway. We feel it is best to ensure that trade is fully briefed on the changes, so that they can provide a good service to their customers and support them and the Freeview platform through these changes.

We will prepare a communications pack for channel providers; including articles and information that may be useful to them when undertaking their own promotion of the channel changes. The pack will include key messages, articles that can be reproduced on websites or elsewhere, and a crib sheet explaining the changes and how to find your favourite Freeview channels. This pack will be available by mid-August.

### 3.4 Implementation date for the changes

Most respondents were relaxed with any of DMOL's proposed possible dates of 12, 19 or 26 September 2012 for implementation of the changes to the LCN listing.

Two respondents said that the proposed timing was too fast, with one suggesting that DMOL needed to push back both the publication of the decisions on the consultation proposals (allowing time for further liaison with stakeholders and for conducting further research), and the timing of implementation. We do not agree that the consultation process has been too fast. Initial stakeholder liaison began in late 2011; the consultation was published on 29 March 2012, and allowed eight weeks for responses. We have had sufficient time to consider all consultation responses carefully, and will allow a minimum eight weeks between the publication of this statement and the implementation of the changes; which has been broadly supported as an appropriate time period.

Another respondent suggested that implementation might be done regionally, as per the digital TV switchover, to enable management of operational impacts. We consider these changes much simpler for viewers than switchover (which required some to buy new TV equipment), and believe there are considerable benefits to implementing the changes nationally on a single date, so that we can drive coverage and awareness of the changes. We further believe that it would be operationally difficult for channel providers to have a period of transition where viewers in different parts of the country saw their channels at different numbers. We appreciate that those with contact centre operations that might support the changes will encounter the operational challenge of scaling up for a nationwide event, but believe the demand for support will be relatively low (given viewers considerable experience of re-tuning through switchover), and further believe that the consumer benefit of a simple, single date outweighs this operational impact.

Respondents expressed no preference between the three alternative dates proposed:

- Wednesday 12 September 2012 – the day of the first switchover stage in the Tyne Tees TV region;
- Wednesday 19 September 2012; the week in between the two Tyne Tees switchover dates; or
- Wednesday 26 September 2012; the day of the second switchover stage in the Tyne Tees TV region.

There is a small benefit for 1.4 million Tyne Tees viewers to implementing the changes on one of their switchover dates (enabling simpler messaging to viewers in this area; and the avoidance of a possible further re-tune). Against this it is technically simpler to conduct the changes on a non-switchover day (i.e. when there is no other activity on the DTT network). There will also be better availability of viewer support facilities which have been brought in for the Tyne Tees switchover, but who would otherwise be quiet in the week in between the two switchover dates.

For this reason DMOL has concluded that the changes will be made on Wednesday 19 September 2012.

We will mitigate the impact on viewers in the Tyne Tees region by carving this TV region out of the programme of MHEG messages (see below). Viewers in this area will re-tune for switchover on 26 September.

DMOL expects to make the changes around lunchtime on 19 September. We will confirm exact timing and implementation details to channel providers by mid-August.

## 4 Decisions on the LCN policy

### 4.1 DMOL's organisation and role

DMOL has not previously held an Ofcom EPG provider licence because DTT is a horizontal platform and DMOL does not produce DTT equipment, and so could not guarantee to meet the accessibility requirements of the Ofcom EPG Code. We are now satisfied that we will only be held accountable for those elements of the Code that we can deliver, and on 16 July 2012 were awarded with an Ofcom EPG provider licence. DMOL has always held itself to the FRND standards of the Ofcom EPG Code and the Communications Act (2003) requirement for appropriate prominence for s.310 PSB services, and so we do not consider that holding the licence will result in any change in behaviour. However the licence may address the concerns of those who called for a more direct regulatory relationship between Ofcom and DMOL.

### 4.2 General response to the proposed new DMOL LCN Policy

Few respondents engaged with the proposed new LCN Policy in significant detail. Most either did not comment, or simply stated that they were supportive of the matters DMOL was seeking to address.

However some channel providers questioned the extent to which the policy satisfied the requirement to be fair, reasonable and non-discriminatory ('FRND'). One respondent said that aspects of the policy do not meet the FRND obligation and that the revisions would instead further the interests of DMOL's shareholders. Another respondent echoed this point of view, saying that they believed the DMOL LCN Policy to be less fair and more discriminatory than that of other platforms and that the revisions only enhanced the imbalance and benefitted DMOL's shareholders. One respondent suggested that DMOL's Policy and changes to the listings should be subject to an independent 'fairness test'. Another suggested that DMOL should have a policy explaining how it will meet its FRND obligations.

Reasons for challenging whether the proposed new Policy met its FRND obligations included:

- The fact that the price paid for multiplex capacity does not relate to the LCN position subsequently allocated, and that carriage costs do not vary should an LCN need to be changed.
- The fact that DMOL requires channel providers to enter into the LCN Agreement was cited by some respondents as not being FRND (and one respondent suggested that this was at least in part because DMOL does not hold an Ofcom EPG Provider Licence – which we have confirmed we now hold).

- Some cited the associated channels rule, which they felt did not satisfy FRND obligations (see section 4.2.1 below for further detail on this point).
- One respondent felt that an internal appeals process to the DMOL Chair was not FRND as they felt that the Chair, as a DMOL member's representative, would be conflicted.

With regards to the general points made we do not agree that DMOL's proposed new LCN Policy is less fair and more discriminatory than other platforms – indeed we note that many of the provisions of the Policy are mirrored in the policies of the other major UK TV platforms. As was explained in section 7.3 of the Consultation document, the purpose of the amendments proposed was to address certain matters and points that we felt would benefit from clarification in the previous version of the Policy. As such we absolutely disagree that the amendments have either the intent or the effect of creating any imbalance, or benefitting DMOL's shareholders.

With regards to the first of the four specific points made above, DMOL cannot comment on matters pertaining to the confidential carriage agreements that exist between channel providers and multiplex operators.

With regards to (ii), we have noted earlier DMOL now holds an Ofcom EPG provider licence, and we regard the LCN Agreement, which sets out the terms and conditions of LCN allocation on the platform, as a fair and reasonable recognition of the basis on which we supply LCNs to channel providers.

With regards to (iii), there were other comments made on the associated channels rule, which we discuss further in section 4.3.1 below.

We consider point (iv) above, which relates to the proposed appeals process, in more detail in section 4.3.6 below.

While we hope that it is self-evident that DMOL meets its FRND obligations by applying the DMOL LCN Policy equitably to all channels on the platform regardless of whether they are owned by DMOL's shareholders, or if any of DMOL's shareholders have an interest in them, we have added a further clause to the new DMOL LCN Policy to put this matter beyond doubt:

*“1.5 For the avoidance of doubt, DMOL interprets its FRND obligation to mean that the Policy is applied consistently to all channels on or joining the platform regardless of their ownership”*

### 4.3 Responses to specific elements of the proposed new DMOL LCN Policy

Respondents commented on 11 specific elements of the proposed new DMOL LCN Policy, which we have reviewed in turn.

#### 4.3.1 Associated channels

The proposal around the associated channels section of the LCN Policy elicited more responses than other sections of the Policy.

Nine respondents were broadly in favour of an associated channels rule that aided viewer navigation by grouping similar channels together. Three respondents felt that there should not be an associated channels rule.

Those opposed to the existence of the rule generally felt that the proposal to restrict the range over which it operated would discriminate in favour of DMOL shareholder channels with their larger channel portfolios. One respondent added that the rule should not be used with reference to a PSB channel.

Of those broadly in favour of the rule respondents split reasonably evenly between those in favour of a limited range for application of the rule, and those who felt there should be no such limitation. Those who felt that there should be a limited range suggested that either three or five might be the appropriate range; or a number linked to the average number of channels on a page of the EPG.

Those opposed to the existence of the rule cited reasons including the following:

- i. That there is no navigation problem on the platform to be addressed;
- ii. That they believe that it does little in practice to aid navigation;
- iii. That it has operated in the past to disproportionately disadvantage 'independent' channels and discriminates in favour of DMOL shareholder channels;
- iv. That the effect is to cluster PSB channels and therefore has a negative impact on diversity and innovation on the platform; and
- v. That Sky does not have such a rule.

The position of those commercial channel providers opposed to the rule was supported by two of the responses received from MPs, who felt that the rule was not fair, reasonable and non-discriminatory (FRND).

In relation to (i) above, we have stated elsewhere why we feel that measures to improve viewer navigation will be increasingly important on the platform. With regards to (v) we do not find comparisons to the Sky platform relevant, since the structure and operation of the channel listing on Sky – where channel numbers can be traded - is very different to that on Freeview.

To assess the assertions (ii) that the rule has done little to aid viewer navigation, (iii) has operated to advantage DMOL shareholder channels, and (iv) has had the effect of clustering PSB channels, we have reviewed the past uses of the rule.

DMOL has records of the associated channels rule having been used 17 times since 2008<sup>7</sup>:

- Three of these instances were for channels on PSB multiplexes, and fourteen were for channels on commercial multiplexes.
- Seven uses were for channels wholly owned by DMOL members and three were for channels in which DMOL members have an interest. The remaining seven instances were for channels in which DMOL members have no interest.
- Eight uses were for commercial channels owned by the PSBs (including one use by Channel 5, which is not a member of DMOL). The other nine uses were by commercial channel families (though three of these were by a commercial channel family in which a PSB has an interest).

We find no clear patterns within this usage, and while the channels owned by the PSBs, or by DMOL members, have used the associated channels rule, it is also true to say that a number of commercial channel families have used the rule.

We have also reviewed the historic effect of the rule on clustering of similar channels, which we regard as aiding viewer navigation:

- Eight of the 17 uses of the rule have brought one channel from a channel family adjacent to another channel from that same family – a situation which we regard as aiding viewer navigation. These applications have, for example:
  - Brought the Channel 4 channel Film4 alongside Channel 4+1 and MoreFour at LCNs 13, 14 and 15;
  - Brought the UKTV channels Dave and Really next to one another, now at LCNs 19 and 20;
  - Brought the Channel 4 channels E4 and E4+1 together at LCNs 28 and 29;
  - Brought the text service Gay Rabbit next to Rabbit at LCNs 102 and 103;
  - Brought the adult channels Blue and Party next to one another, now at LCNs 96 and 97; and
  - Brought the adult channels Smile TV2 and Smile TV3 next to one another, now at LCNs 93 and 94.

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<sup>7</sup> Note that DMOL does not have complete records of all historic LCN allocations, and the 17 recorded instances of application of the associated channels rule represent the most complete record that DMOL is reasonably able to compile from 2008 onwards, but that we cannot warrant that it is comprehensive.

- Of the other eight uses of the rule, the two associated channels have ended up sometimes four, five or six positions apart; but also as many as 13, 18 or 19 positions apart in the channel listing.

It is difficult to determine how close associated channels might need to be for viewers to recognise the commonality between them and for that in turn to aid their navigation through the listing. However we believe that it is clear that gaps as large as 13, 18 or 19 are extremely unlikely to benefit the viewer.

We conclude from the analysis above that:

- The rule has had some benefit to viewer navigation, but we believe that this benefit only exists where the rule has been applied across narrow ranges of LCN positions.
- The rule has been used to the advantage of both DMOL shareholder and other commercial channel providers, with no clear pattern of overriding benefit to the former over the latter.
- Similarly, that the rule has had the effect of clustering some PSB family channels, but also a number of commercial family channels, with no clear pattern of overriding benefit to the former over the latter.
- The rule exists to benefit viewers not channel providers, but by its nature the rule potentially provides greater benefit to those channel providers with larger channel portfolios by virtue of the fact that they are statistically more likely to find one of their channels close to a vacated LCN. Nonetheless we see no systematic bias in favour of one type of channel or channel provider over others (and indeed note the diversity of channel content types described above), and hence see no evidence of the rule having diminished diversity or innovation on the platform.

As such we believe there is a benefit to viewers of retaining the associated channels rule, but believe that in order to ensure that the rule operates to aid viewer navigation its application should be limited to a reasonable range of LCNs.

Since most DTT EPGs display somewhere between six and eight channels on a page, we believe it is appropriate to limit the range of the associated channels rule to no more than five positions above or below the vacated LCNs. This limit has therefore been added to the new DMOL LCN Policy.

We have also clarified that the associated channels rule may not be used in relation to a PSB channel benefitting from s.310 CA appropriate prominence.

#### **4.3.2 LCN swapping**

Views were divided on the question of whether and how channel providers might be permitted to swap LCNs within their channel portfolio – though fewer respondents chose to answer this consultation question.

Responses from non-Member (and not controlled by Member) organisations included one that was in favour of swapping, and two who were opposed. Among those who opposed swapping it was argued that there was no evidence that swapping would benefit viewers; that the rule would not be consistent with FRND obligations; and that it would disproportionately benefit DMOL shareholders with large numbers of channels.

Views were equally divided among DMOL Members. One supported channel providers being able to freely swap LCNs within their channel portfolio at any time provided that it better met viewers' needs; one supported LCN swapping where it would enable the listing to better meet audience expectation, at DMOL's discretion; and two felt that LCN swapping should not be allowed. Those who opposed swapping said that DMOL should manage the allocation of LCNs on the platform, and expressed concerns around fairness and disruption to viewing habits without tangible benefits to the consumer.

We regard the potential benefit of LCN swapping as being a mechanism that might allow channel providers to migrate content to higher EPG positions, to the benefit of viewers.

However, against this we feel that frequent and/or un-coordinated swapping of LCNs might lead to consumer confusion and hinder DMOL's aim of improving navigation within the DTT channel listing. We also note the swaps would require viewers to re-tune, and that it would not be desirable for viewers to need to re-tune very frequently.

Paragraph 7.4 of the old DMOL LCN Policy (version 4) permitted reallocation of the LCNs of associated channels in very limited circumstances where the change results in the channels being listed in an order which, in DMOL's opinion, was more likely to reflect viewer expectations. The reordering of channels within the name of which is an implied listing order – such as ITV2 and ITV3 – was provided as an example.

We recognise that in the old DMOL LCN Policy the conditions under which the swap would be allowed were somewhat unclear. We therefore see a benefit in providing clearer guidance to channel providers about the circumstances in which a swap of LCNs is permitted. We have also provided guidance about the nature of the evidence that DMOL would wish to see to substantiate the case for a swap meeting viewer expectations, and we emphasise a commitment by DMOL to enter into suitable confidentiality arrangements should channel providers wish to share any commercially sensitive channel plans with us.

We also note that the ability to swap LCNs described in paragraph 7.4 of the old DMOL LCN Policy was tied to the moment of application of the associated channels. We see no particular reason to confine swaps of LCNs to this moment in time if they are to work effectively to the benefit of viewers, and so have disassociated the paragraph on LCN swaps from the moment of application of the associated channels rule. Against this we remain concerned that swaps do not become a frequent and un-coordinated feature of the Freeview platform, given the viewer requirement to re-tune. As such we have provided guidance in a separate schedule to the new DMOL LCN Policy which makes clear that channel providers may only undertake one swap of any LCNs within their portfolio in any given year; that the timing of the swaps must be agreed with DMOL; and that DMOL will seek to aggregate all swaps onto one date in calendar quarter 3 (July to September) of any given year.

Paragraph 7.6 of the new DMOL LCN Policy and the accompanying Schedule 4 are intended as a modest loosening of the current LCN swapping arrangement. We intend to monitor the operation of the revised provision closely, and wish to review it in a year's time or if we become concerned about it having a detrimental impact on viewers.

#### **4.3.3 Evolution of channels rule**

One respondent expressed concern that DMOL is seeking to widen its discretion in relation to the definition of channel evolution, and said that this might unreasonably lower the threshold at which channels risk losing their LCN, which in turn might remove the incentive to evolve to match viewer's tastes, to the detriment of viewers.

We would like to be clear that the addition of consideration of the broadcast hours of a channel to the definition of channel evolution in no way undermines channel providers' reasonable ability to evolve channels to adapt to viewers' tastes. We would welcome any channel provider considering an evolution of its channel to discuss the planned changes with us in advance.

#### **4.3.4 Listing of PSB channels**

One respondent asked that the Policy is amended so that occupied as well as vacant LCNs can be allocated to PSBs.

As we explained in the 6 July 2012 'Interim Statement on LCNs for local PSB services' we believe that moving incumbent channels to make way for a new local PSB would precipitate significant change and disruption for both a large number of channels (who invest in promoting their channel number) and probably all DTT viewers, given the viewing share of the channels that would be moved. As such we do not believe that it would be proportionate to propose such a change which would be contrary to the clear and long established provisions of the policy.

#### **4.3.5 Consulting on changes**

One respondent asked that DMOL informs all stakeholders directly about all consultation, whether conducted under either the 'full' or the 'light' process.

We are content to amend the Policy to say that we will inform all channel providers directly of all consultations.

#### **4.3.6 Appeals process**

One respondent felt that appeals should be considered by the full DMOL Board rather than the Chair alone. Another respondent questioned whether the appeals process as described

was an effective right of appeal. Another respondent said the appeals process should include an appeal to Ofcom.

All LCN allocations are made with a Board majority, and it is for this reason that we remain of the view that the appeals process should be made to the DMOL Chair.

As stated in the Consultation document, channel providers are free to raise a complaint to Ofcom at any time, and the availability of an internal appeals process in no way prejudices this right.

#### **4.3.7 The shuffle-up procedure**

One respondent asked for clarification on when a shuffle-up would be undertaken: how many vacated LCNs would trigger the procedure; whether services would be able to request a shuffle-up (and what evidence would be needed); and whether a channel could stay put.

There is not a fixed number of vacated LCNs that would trigger a shuffle-up procedure, but we would generally consider this when five or more vacated LCNs were having the effect of limiting the availability of LCNs at the bottom of the genre. Since vacated LCNs close and are not apparent to viewers we do not consider that there is a need for channel provider to request a shuffle up. We can confirm that channel providers would not be compelled to move as part of any shuffle-up process.

#### **4.3.8 Description of transactional channels**

Two channel providers said that DMOL should differentiate between transactional channels, and stated that there were differences between shopping, adult and gambling or dating channels – though all fall under the wide umbrella of the ‘transactional’ term. One respondent also suggested that DMOL should address the fact that many General Entertainment channels show transactional content late at night. One respondent said that any transactional definition should be based on viewing hours to that channel, not just the number of hours of a transactional nature broadcast.

DMOL refers to channels generally licensed by Ofcom as ‘teleshopping’ under the ‘transactional’ heading, but agrees that there is a wide range of content types that fall under this term. We have been clear in distinguishing Adult Chat from all other types of teleshopping. We have no further comment on any possible definition of ‘transactional’ since we are not creating a transactional genre.

#### **4.3.9 Definition of Adult channels**

One respondent objected to the definition of the Adult genre and said that they believed it had no basis in law and was open to challenge. The respondent suggested that DMOL’s definition does not correspond to that used in other parts of the EU (such as the

Netherlands) where content is considered General Entertainment and consumer protection matters are addressed in more sophisticated ways.

DMOL believes that its definition of the Adult genre is clear, reasonable, and consistent with both the UK regulatory environment and definitions used on other major UK TV platforms. We note that consumer expectations in the UK may be different to those elsewhere in Europe, and that we are entitled under UK and EU law to reflect that in our treatment of adult channels.

#### **4.3.10 Local channels**

One respondent requested clarification in the Policy that channels broadcast on a local basis would be assigned into their content genre. The same respondent suggested a clarification that for the purposes of considering any new genre, local services sharing an LCN would be deemed to be one service.

We believe that the former point is clear in the Policy by omission of any reference to a local genre or any definition based on the geography of a channel.

We agree that for the purposes of considering any new genre that services sharing a single LCN would be deemed to be one service.

#### **4.3.11 Clarification about the potential for a ‘Restricted Hours’ genre**

One respondent asked if DMOL’s comments in section 5.19.3 of the Consultation about the possible irritation for viewers of channels that occupy valuable LCNs when only broadcasting for a very few hours per week was intended to suggest that a ‘Restricted Hours’ genre might be created under the process described in 7.5.5 of the Consultation.

We can clarify that DMOL has no intention of creating a ‘Restricted Hours’ genre since our research demonstrated that it is content-based genres that are meaningful to viewers.

#### **4.3.12 Other amendment**

We have made one further minor amendment to the draft new DMOL LCN Policy, under clause 3.3, where we have clarified that DMOL will not generally allocate LCNs for test services unless it considers it appropriate to do so. The revised wording simply removes the erroneous references to ‘Interactive’ services (which of course are eligible for allocation of LCNs) and ‘Data’ services (which were not defined).

The revisions to the draft version of the new DMOL LCN Policy described above are reflected in the final version of the new DMOL LCN Policy (V5), attached at Annex 3.

This new version of the Policy comes into effect today 30 July 2012, the date of publication of this Statement.

## 5 The timing and scope of future reviews of the LCN listing

### 5.1 Introduction

In the consultation DMOL suggested that we were aiming to develop an LCN listing and policy appropriate for the developments anticipated on the platform over the next two to four years and invited comments on the timing and scope of future reviews.

### 5.2 The timing of future reviews

The consultation suggested that a further review of the LCN policy would likely be required in a two to four year time frame bearing in mind the speed of development of the DTT platform and in particular the uptake of connected devices and the launch of IPTV services we anticipate later this year.

A number of responses suggested that frequent reviews result in commercial uncertainty for channels on the platform and that this can inhibit investment decisions, arguing that concerns that a future review might result in a change to the LCN of a channel can inhibit channel providers' preparedness to invest in their services and to launch new services on the platform. Some responses therefore called for a longer period between reviews and one suggested that the timing of reviews should be more closely tied to the investment cycle for investment in DTT multiplex capacity. DMOL recognises this commercial concern and that it is in the interests of neither consumers nor channel providers if there are barriers to investment in the platform. We have therefore considered how this issue can be addressed so as to remove or at least limit any potential barrier.

We interpret the research we have undertaken as showing there is not a strong demand for change from consumers today and believe that consumers' views, other things being equal, are unlikely to change rapidly. However, the views held by consumers are based on the technology that viewers are exposed to today rather than on future technological developments. As pointed out in the preamble to the research, it is not possible to reliably test consumers' responses to services that have not yet launched and that are not familiar to them.

DMOL cannot simply undertake to increase the period between reviews irrespective of changes in the market. We recognise that this is a period of considerable development in the market, with YouView having just launched and other IP services providers likely to follow shortly thereafter. There have also already been significant sales of connected devices which allow access to MHEG delivered services. While DMOL recognises that few of these connected devices have to date been connected to the internet, (an Ipsos Mori Tech Tracker survey in early 2012 suggested that only 2 percent of DTT households surveyed had TVs which were connected to the internet), it is likely that connection rates will rise as the range of services offered to consumers over the internet increases. Increases in broadband speed will also tend to increase connection rates. These technological developments could result in a very significant increase in the number of services which can

be accessed via the DTT platform for viewers with these devices, and the use of these services, and could prompt the need to consider a more radical reorganisation of the LCN listing of the platform in the medium term to improve the viewer experience and to maintain the competitiveness of the platform.

Recognising the potential for these developments, but that an inhibition of investment could result in a reduction in viewer choice, DMOL has made the decisions on the LCN listing set out in this statement with the objective of allowing for future demand in all genres over a three to four year period rather than the two to four year period suggested in the consultation document with the aim of reducing the risk of an early review being needed. Minimizing the frequency of LCN reviews has the side benefit for DMOL (and potentially also for channel providers) of reducing the significant effort and resources that such reviews require.

DMOL believes that broken genres are undesirable and that the LCN listing should continue to be organised, as far as possible, logically and by genre. In the case of the General Entertainment genre in particular, we have sized the LCN listing to be adequate to service a high level of future demand for General Entertainment LCNs.

Where there is particular uncertainty about the growth, range and types of services that are likely to be available to DTT viewers, and in particular in the cases of MHEG and IP delivered services, we have dealt with this by organising such services into genres based on their delivery method, rather than their content. In these cases DMOL has also tried to ensure that there is room in the LCN listing to expand the range of LCNs allocated to a genre while minimising the impact on other genres.

DMOL therefore does not anticipate initiating a further major review of the LCN listing for three to four years, absent significant changes in the market or significant problems arising with the existing LCN listing. However, we must reserve the right to initiate future reviews if there is significant change in the market, if there are changes in multiplex availability or capacity not anticipated in this review or if significant problems arise with the existing LCN listing.

### **5.3 The scope of future reviews**

In the consultation, DMOL also invited comment on the scope of future reviews, on alternative approaches to the proposals being made by DMOL and in particular sought respondents' views on alternative approaches to the ordering of channels in the General Entertainment genre.

There were a number of comments made on the shopping genre. Some respondents took the view that DMOL should have proposed the creation of a shopping genre in this review, or if not proposed in this review, DMOL should return to the issue of creating this genre in a future review. However, responses from shopping channels and some other channel providers argued strongly that DMOL should not revisit the issue of the creation of a shopping genre as research results were unlikely to change in the short term and the prospect of such a re-consideration created commercial uncertainty for channel providers.

The concept of reorganising the General Entertainment genre by channel family also drew strongly polarised views. Many channel providers were strongly against a reorganisation of the General Entertainment genre by channel family in this or future reviews. Respondents pointed out that most consumers surveyed were indifferent to such a reorganisation, as they were to all of the changes proposed, and that such a reorganisation would cause very significant disruption to their viewing. There was also a concern that a reorganisation by channel family would tend to benefit those shareholders of DMOL who are owners of public service channels with low LCN positions and are also providers of significant numbers of channels on the DTT platform, at the expense of other channel owners. They suggested that such a reorganisation could not be undertaken on a FRND basis. Some suggested that such a reorganisation would raise competition issues. Other responses raised issues as to how a reorganisation by channel family would work in practice and what principles it would be based on. Many suggested that DMOL should not return to this issue.

Responses from IPTV providers and MHEG services providers suggested that if DMOL decided not to include their services within the existing content based television genres as a conclusion from this review, it should reconsider doing so in a future review.

There were some responses in favour of a more radical review. One suggested that as the number of services on the platform grows, a more radical reorganisation of the EPG will be needed if the DTT platform is to remain competitive with other platforms. Another suggested that DMOL should do more work on the possibility of creating direct access genres and that it should return to the concept of a channel family based organisation of the General Entertainment genre in a future review.

Other responses were opposed to the concept of a more radical review. Some asked what DMOL meant by the suggestion made in the consultation that there may come a time when the strategic benefits of making greater changes to the listings policy outweigh potential resistance from channel providers and indifference or a lack of saliency to consumers. In making this point, we are conscious of the significant changes that are likely to the DTT platform and the services available via DTT equipment, through increases in capacity and through internet connected equipment. As the number of services available on the platform increases, we believe that offering consumers an effective way to find the services that they want to watch will become increasingly important to the competitive position of the DTT platform.

However, based on the responses and the range of evidence currently available, and having considered our objectives and the framework for analysis set out in section 2.1, DMOL does not anticipate returning to the issue of either the creation of a shopping genre or the reorganisation of the General Entertainment genre into channel families absent clear evidence of the need for change, and in any case not within the next three to four years, the timeframe set out in the previous section. Nor do we believe that in this timeframe it will be necessary to reconsider whether to include IPTV and MHEG delivered services within the relevant television genres.

However, as in the case of the timing of the next major review, DMOL must reserve the right to initiate a review with wide scope, backed by appropriate evidence, if developments in the market make it necessary to do so. The triggers for such a review might include: significant genre overflows or consumer protection issues; significant change in the market with rapid take up of IPTV services and/or the use of connected devices to access MHEG delivered services; developments in multiplex availability or capacity not anticipated in this review; or significant developments on other platforms which result in the need to protect the competitiveness of the DTT platform.

## 6 Next steps

Following the publication of this consultation, our next steps will be as follows:

- DMOL's new LCN Policy, which is set out in Annex 3 of this document comes into immediate effect on the publication of this statement, when version 5 of the policy will replace the previous version 4.
- We will be contacting channel providers by the middle of August to confirm the exact timing and the details of implementation. This will also provide us with an opportunity to confirm the agreement of those channel providers whose LCNs are changing in order to close gaps in the General Entertainment, News, Text and MHEG services and Interactive services genres.
- We will also prepare a pack of communications materials which we will circulate to channel providers by the middle of August.
- We aim to publish the results of the DTG testing of this rearrangement of the LCN listing by the end of August. These will be available on DMOL's website.
- The LCN changes will be made on 19 September 2012.

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## Annex 1: Summary of consultation responses

### 1. Introduction

DMOL received a total of 131 responses to the consultation, four from its shareholders, 16 from other channel providers or prospective channel providers on the DTT platform, three from IPTV providers, ten from other organisations, ten from political representatives and 88 from individuals. The responses from individuals included 86 in substantially the same terms relating to the prospective LCN listing for the Irish language channel TG4, as a result of a campaign organised by viewers of TG4. A list of the consultation responses is shown in Figure 1 over the page.

Some of the responses were confidential. Those that are not confidential have been published on the DMOL website.<sup>8</sup> In the summary that follows, the name of the relevant respondent has been indicated, where the response is not confidential.

In section 2 of this annex, responses are summarised by consultation question for questions 1 to 19 relating to the LCN listing.

For the issues relating to DMOL's LCN Policy, responses have been summarised in section 3 by theme rather than by consultation question.

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<sup>8</sup> <http://www.dmol.co.uk/Consultations/2012responses>

**Figure 1: List of consultation responses**

<b>DMOL members</b>
Arqiva
BBC
Channel 4
ITV plc
<b>Other channels and channel providers</b>
Associated News
Channel 5
Channel 6
Commercial Broadcasters' Association
Connect TV
Discovery
Element Television
Game Network BV
Portland TV
QVC
Sky
+ five other channels or channel providers who wished to remain anonymous and/or whose responses were confidential
<b>IPTV Providers</b>
BT Vision
+ two other IPTV providers who wished to remain anonymous and/or whose responses were confidential
<b>Other organisations</b>
Altram
Communications Consumer Panel
Conradh na Gaeilge
Creative Scotland
Digital Television Group
Electronic Retailing Association
Freeview
Institute for Local Television
RNIB
TP Vision
<b>Political Representatives</b>
Fiona Hyslop MSP (Scottish Government)
Dominic Bradley N.I. Assembly member
Angie Bray MP
Mark Durkan MP
Jane Ellison MP
George Howarth MP
Dolores Kelly SDLP Deputy Leader
+ three other political representatives who wished to remain anonymous and/or whose responses were confidential
<b>Individuals</b>
Chris Young
86 other individuals - write in campaign by TG4 viewers
One other individual

## **2. Consultation responses on questions relating to the LCN listings**

### **Question 1 – Issues to be addressed by the revised LCN listings**

Most respondents agreed with DMOL's view that at a minimum the revised LCN listings must address the issues of the genres which have overflowed, and ensure that there are no further overflows in the next two to four years. Those in agreement included the BBC, ITV, Channel 4, Arqiva, Channel 5, Discovery, Freeview, TP Vision, four other organisations and two individuals. Channel 5 suggested that while the consultation should address these issues at a minimum, it should have been more radical, gone further and addressed the listings regime as a whole. Another respondent, Discovery, while supportive of the current approach, was concerned about the possibility of more radical proposals in a future review and suggested that such proposals would need to be supported by robust evidence on consumer preferences and evidence of the effect of any proposed changes on the channels on the platform.

Some respondents disagreed with the premise of the consultation. Four respondents, Sky, QVC, and two others challenged the role of genres on the DTT platform as it is not possible to navigate directly to a genre, and some of them suggested that in the absence of effective genres, overflow issues should be managed by simply allocating the next available LCN. They suggested that DMOL's proposal to create more space in the General Entertainment genre would disrupt the viewer experience and deliver little benefit. One suggested that since the research showed a high level of indifferent responses, there would be little consumer benefit from the proposed changes. One respondent suggested that a better way of dealing with the overflow of the General Entertainment genre would be to create a new genre for time shifted channels. Another respondent said that the two to four year timeframe for reviews is too frequent and represents damaging uncertainty for channels on the platform.

### **Question 2 – Views on proposal not to create a dedicated shopping genre**

There was strong support for this aspect of DMOL's proposals, with almost all respondents, including all the providers of shopping channels, agreeing that DMOL should not create a dedicated shopping genre as a result of this review. A variety of reasons were cited for this view.

The providers of shopping channels considered that the DMOL research suggests that there is no consumer demand for the genre. They also cited the economic damage to their businesses, from reduced viewing levels and reduced revenue, which would result from the creation of a shopping genre. One shopping channel provider pointed out the importance of scrolling behaviour and suggested that viewers tend not to scroll beyond LCNs 40 to 50, so any move to a higher LCN would be very damaging to their business. QVC estimated that a

35% to 40% turnover loss would result from creation of a dedicated genre and said that they would also incur marketing costs to publicise the new LCN numbers. A shopping channel provider provided evidence of the revenue loss to one of their channels when it changed LCN numbers and suggested that this revenue loss was not temporary but permanent. It suggested that the creation of a dedicated Shopping genre on the DTT platform would likely result in the closure of its business. QVC suggested that the creation of a dedicated genre would be anti-competitive and incompatible with DMOL and its shareholders' obligations to behave in a fair, reasonable and non-discriminatory (FRND) manner in the allocation of LCNs on the DTT platform.

These views were supported by the Electronic Retailing Association, the trade association for TV shopping channels, who also pointed out that low LCN numbers are a reward for risk taking by channels who joined the DTT platform early and said that low LCNs are key to attracting new surfing viewers, and that stable LCNs are key to existing viewers. Similar views were put forward by a number of MPs, including Angie Bray, MP; George Howarth, MP; Jane Ellison, MP; who responded to the consultation in support of a shopping channel.

However, some channel providers and other respondents supported the creation of a shopping genre, either now (Channel 5, TP Vision and an individual), or potentially as the result of a future review (BBC, Channel 4, Freeview and one other).

### **Question 3 – Reasons cited for supporting the creation of a dedicated Shopping genre**

Those respondents which did support the creation of a dedicated Shopping genre suggested that it would be potentially beneficial for viewers and channel providers (Channel 4, Channel 5, and one other) though some did recognise that the demand from audiences is not currently strong enough to warrant the disruption that would be caused by creation of the genre.

Freeview pointed out that the research demonstrates that viewers want to see a logical ordering and arrangement of genres by content and that if there is to be a change in the LCN listing, viewers would prefer it to be meaningful. They also pointed out that the concepts that included a shopping genre were more favourably received by viewers and non-viewers of shopping channels alike. The BBC and Freeview called for DMOL to maintain a watching brief and potentially to return to this issue in a future review as the creation of a shopping genre would make the listings more logical, easier to navigate and more akin to the EPGs of other platforms. TP Vision, the manufacturer of Philips branded TV sets, also considered that creation of the genre would benefit viewers, as did one individual.

Sky noted that the decision not to propose a dedicated Shopping genre is illogical given the importance DMOL ascribes to improving navigation and grouping like channels together and is inconsistent with DMOL's stated commitment to providing clear signposting on the platform.

## Question 4 – Comments on proposals for the HD genre

Most respondents who commented on the HD genre supported DMOL's proposal to move the genre to LCN 101, to reorder the channels in line with their SD channel equivalents. They also supported allowing LCN swapping between identical SD and HD channels if proposed by the channel provider. (BBC, ITV, Channel 4, Arqiva, Channel 5, Freeview, BT Vision and four others.)

A number of further comments were made by individual respondents. The BBC suggested that the organisation of the HD genre should offer appropriate prominence to PSB channels and that LCNs 105 to 107 should be reserved for Channel 5, BBC Three and BBC Four respectively. Beyond this, it suggested that channel organisation in the greenfield HD genre should not be tied to SD equivalence and that HD channels might be grouped by channel families. Three respondents, including Arqiva, suggested that the number range proposed by DMOL (101 to 109) might be inadequate given likely improvements in multiplex capacity and the possible use of the 600 MHz band for HD simulcasting.

Four respondents questioned the existence of an HD genre as it is not content based (Sky, QVC, TP Vision, one individual) and two of these suggested that the HD swap process would make the genre redundant by emptying it over time. Two other respondents, including TP Vision, asked how DMOL would treat an HD version of a non-General Entertainment genre such as a news or adult channel, and which genre it would be placed in. QVC reiterated its opposition to genres in general as it considered they have minimal role on the DTT platform since genres cannot be accessed directly.

## Question 5 - Comments on proposals for the Children's genre

Most respondents who commented on the Children's genre supported DMOL's proposals for it (BBC, ITV, Channel 4, Channel 5, Freeview, BT and two others) though two respondents pointed out that while supporting DMOL's proposal in general, they did not agree with the existence of the HD genre (TP Vision and one individual).

Two respondents (Arqiva, Freeview) pointed out that the proposal to move children's services to LCN 110 is based on the need to expand the General Entertainment genre, and suggested that DMOL review the future demand for General Entertainment LCNs as, if future demand could be accommodated in LCNs 1 to 70, it might be possible to avoid moving both the Children's and News genres. This could represent a better, less disruptive, solution for viewers.

One respondent, QVC, generally opposed to the use of genres on the platform, noted that DMOL's planned changes in relation to both the Children and Adult genres are public policy based, but considered that these public policy based arguments did not justify any increase in the use of genres on the DTT platform. Another respondent was opposed to any rearrangement of the LCN and considered that if DMOL was trying to position children's content as far away as possible from adult content, the children's channels should be nearer the top of the listing.

## Question 6 – Comments on proposals for the News genre

DMOL's proposal to move the News genre to LCN 120 was generally supported by those respondents who commented on it (BBC, ITV, Channel 4, Arqiva, Channel 5, Freeview, BT, TP Vision and three others).

The reservations expressed were similar to those made in relation to the Children's genre, with two respondents (Freeview and Arqiva) suggesting that DMOL review whether future demand for General Entertainment LCNs necessitated moving the Children's and News genres, and two respondents (TP Vision and an individual) pointing out their opposition to the existence of the HD genre.

Sky expressed general opposition to DMOL's proposals for the television genres on the grounds that the LCN renumbering would result in significant disruption to viewers with little real benefit to them, and would damage channel businesses without adequate justification. It suggested that DMOL had failed to objectively justify the genre moves and that it is inappropriate for DMOL to push existing channels down the EPG for the sake of maintaining genre integrity when DTT genres are practically meaningless and inconsistently applied. Another respondent was opposed to any rearrangement of the LCN listing.

## Question 7 – Comments on proposals for the Adult genre

By the time that this consultation closed, DMOL had already implemented its response to the interim consultation published on 29 March 2012 alongside this consultation, which covered DMOL's interim proposals to reunite the Adult genre and move the Local TV genre. The responses to this consultation were therefore made in light of the fact that the Adult genre had already been reunited and temporarily positioned at LCNs 91 to 100 inclusive, pending the results of this consultation.

Every respondent who dealt with the Adult genre supported its reuniting into a single block of LCNs except for one individual who objected to any carriage at all of adult channels on the DTT platform. Consultation responses therefore focussed on the positioning of the Adult genre relative to content attractive to children and to other genres, in particular the Text and MHEG genre.

Views were split as to whether the Adult genre should be positioned before or after the Text and MHEG services genre. All of the non-adult channel provider respondents agreed with the need to position adult channels well away from those attractive to children for consumer protection reasons; however, this reasoning led respondents to propose differing solutions and some were silent on their view of the most appropriate positioning for the Adult genre (Sky, QVC, the Communications Consumer Panel and two others). A number of respondents supported DMOL's proposal to position adult channels after the Text and MHEG services genre (BBC, ITV, Channel 4, Channel 5, Freeview and one other). Their reasoning was based on the need to have an adequate buffer between services attractive to children and adult channels, and the use of the News and Text genres for this purpose.

They felt this use of the Text genre as a buffer was more important than preserving a sequence of all the television services ahead of non-television services on the platform.

Some respondents however felt that the Adult genre would be better positioned before the Text and MHEG services genre. Arqiva felt that the Text genre itself might contain both adult content and content attractive to children, particularly within MHEG services, and that it would be better to keep all television services together and rely on the existing consumer protection measures of bookends and the naming convention for adult chat channels on the LCN listing. Freeview and BT Vision also pointed out that both MHEG delivered and IP delivered services might in future include adult services as well as children's services. DMOL therefore needed to consider the best approach to provide consumer protection and to prevent children scrolling through adult services to find content attractive to them. Two respondents (BT and one other) suggested that IP delivered services should be positioned ahead of adult services to avoid this.

The adult channel providers who responded did not support DMOL's proposals but held different views. One did not argue against the change of LCNs but argued that the Adult genre should be positioned between the News and Text genres, and not after Text. This would satisfy the request from Ofcom to position adult channels after all the other television channels. It pointed out that until IPTV services launch there will be no occupied LCNs between adult services and radio (omitting reference to interactive services) and that BBC Radio1 and 1Extra are both attractive to young people. The news services and bookend channels would provide adequate protection for younger viewers scrolling up from the Children's genre, while text services would provide a buffer between adult channels and radio. Another adult channel provider argued that no further changes were needed after implementation of DMOL's interim proposals and that the adult channels should not be positioned behind text services. An adult channel provider offered evidence of the commercial damage it had suffered from previous LCN moves.

The adult channel providers did not accept DMOL's research, one arguing that viewers of adult channels are unlikely to respond honestly to the research questions and non-viewers may exaggerate their responses. Another argued that the qualitative research evidence was based on too small a sample size and had been used to 'over-interpret' the quantitative research findings. There was no evidence that moving the Adult genre further away from children's content would prevent scrolling; DMOL should have undertaken a more thorough behavioural study.

One adult channel provider disputed the definition of the Adult genre and considered it unfair that general entertainment channels are able to show content which is BBFC-18 rated after the watershed without being classified as adult channels.

Most respondents who commented on them supported the use of bookend LCNs around the Adult genre, however TP Vision suggested that it would be preferable to use the DVB Parental Ratings descriptor to signal adult content. This would allow parental controls to be used on some equipment.

## Question 8 – Comments on DMOL’s proposals for the Text and MHEG services genre

Most responses which commented on this genre supported DMOL’s proposal to reposition the Text and MHEG services genre after adult services and to split it into two sub-genres, traditional text services and MHEG delivered services (BBC, ITV, Channel 4, Channel 5, Freeview, BT Vision, TP Vision and two others). There was no disagreement with the proposal to divide the genre into two sub-genres. The BBC argued that its text service should be positioned at the head of the genre to meet the requirements for appropriate prominence for a PSB service. A response from a channel provider suggested that it had no overriding objection to the proposed changes so long as they were limited to alteration of the first digit of the LCN (i.e. changing a ‘1’ to a ‘2’ in the three digit LCN number).

As discussed above however, some respondents felt that the Text and MHEG services genre should not be positioned ahead of adult services. This included the adult service providers, one of whom considered it illogical and in contravention of FRND principles to position text services ahead of AV services, when text services have traditionally been at the end of the EPG. There was also a concern expressed that MHEG service providers might launch adult services themselves, ahead of broadcast video adult channels. One other respondent, Arqiva, was content with the proposed renumbering of the Text and MHEG genre but argued that the genre should be positioned after and not before adult services.

A response from ConnectTV pointed out that MHEG delivered services could be used to offer channels in a wide variety of genres and it would be more logical to position the MHEG portal to such channels in the relevant genre, rather than in a dedicated genre. ConnectTV’s response also suggested that there would be significant growth in the number of MHEG delivered services on the DTT platform. (A similar argument on splitting the genre was made in the case of IP channels by IP channel providers.) Two IPTV service providers, including BT Vision, suggested that the Text and MHEG genre should be positioned after all TV services except the Adult genre, and that IPTV services should be positioned ahead of the Text genre. BT Vision suggested that adult services within the Text genre should be located within the Adult genre. TP Vision also suggested that the two sub-genres should be renamed ‘MHEG Text Services’ and ‘MHEG Streaming Services’.

## Question 9 – Comments on DMOL’s proposals for the Local genre

Most responses which commented on this issue supported DMOL’s proposal to abolish a dedicated local genre and position local services within the most appropriate genre based on the content of the services, rather than separating out a group of services based on their distribution area (BBC, ITV, Channel 4, Arqiva, Channel 5, Channel 6, TP Vision, Discovery, Freeview, BT Vision, and an individual). All the prospective providers of local services who responded to the consultation supported this proposal.

The proposal was opposed by COBA, the Commercial Broadcasters Association which argued that the proposal was not supported by the research findings which suggested there is a high degree of consumer indifference to placing local services within the General

Entertainment genre. It argued that the appetite for local services is based on an appetite for news and information content, not entertainment, and that inclusion of these services within the General Entertainment genre could create unnecessary pressure on the genre size. One provider of shopping channels was opposed to the proposals, and QVC declined to comment arguing that they were unsupported by research evidence and that there had been no impact analysis of the effect of the proposals on channel providers or a cost/benefit analysis of alternative solutions. Another respondent did not agree with any rearrangement of the LCN listing.

## **Question 10 – Comments on DMOL’s proposals for the allocation of appropriately prominent LCNs to local services with PSB status**

### **Q10.1 Services licensed under Communications Act section 244**

Dealing first with local services licensed under the proposed new section 244 regime, most established channel providers and platforms who commented on DMOL’s proposal to allocate the lowest available LCN (LCN 8 in England and Northern Ireland, LCN 45 in Scotland and Wales) supported it as did one individual. Those in support included BBC, ITV, Channel 4, Arqiva, Channel 5, Freeview and BT Vision. The BBC and Channel 4 agreed specifically that DMOL’s proposals met the requirement to provide appropriate prominence for services with public service status licensed under section 244 CA. QVC declined to comment on the proposal, arguing that it was not supported by research evidence or an impact assessment.

Views among prospective local TV providers depended on the nation from which the service would be broadcast. One supported the proposal. However, prospective service providers in Wales and Scotland, the Institute for Local Television and Element Television, felt that LCN 45 was not adequately prominent, was inconsistent with PSB status and would make local services in these nations commercially unviable. The Scottish Government and Creative Scotland were also concerned that LCN 45 was not adequately prominent and were concerned with the disparity between LCNs 8 and 45. The Scottish Government, while recognising there is some merit in not changing existing allocated LCNs other things being equal, called for an LCN in the ‘top 20’ to be allocated to local PSB services in Scotland. Creative Scotland emphasised its support for and concern not to interfere with the positioning of BBC Alba at LCN 8 in Scotland. Some respondents called on Ofcom to regulate to ensure that the local services in Scotland and Wales receive adequate prominence and equivalent prominence to that available in England and Northern Ireland.

One prospective local service provider, Channel 6, opposed the proposal, arguing that LCN 6 should be allocated to local services licensed under section 244 across all four nations and that this is essential to the viability of the new services. If DMOL did not wish to take this approach it suggested that the government or Ofcom should impose it, and that Ofcom’s EPG code should be made more prescriptive and allocate specific LCNs to PSB services. Recognising that LCN 6 is currently occupied by ITV2, it suggested that ITV2 should be

moved to LCN 8 in England and Northern Ireland, and that ITV plc should be required to re-arrange the LCNs of its portfolio of channels in Scotland and Wales.

#### **Q10.2 Irish language service TG4**

A number of responses from two organisations (Conradh na Gaeilge, Altram) and 86 other individuals in an organised campaign argued that the Irish language service *Teilifís na Gaeilge* (TG4), licensed in and broadcast from the Republic of Ireland is in effect the Irish language public service channel for Northern Ireland. The channel has the long standing support of the UK government and like BBC Alba and S4C it should be allocated the single digit LCN 8 in Northern Ireland. This position was supported by a number of political representatives in Northern Ireland (Dominic Bradley, SDLP Assembly member Newry & Armagh; Mark Durkan, MP Derry; Dolores Kelly, SDLP deputy leader).

#### **Question 11 – Comments on proposals for the interactive genre**

Most respondents who commented on this supported DMOL's proposal to position the Interactive genre at LCN 350 after Text and MHEG services and the Adult genre (BBC, ITV, Channel 4, Arqiva, Channel 5, Freeview, BT Vision and one other). Channel 4 also suggested that in future, when there are many more such services on the platform and they are widely used it may no longer be appropriate to position them after adult services and that at the next review DMOL should consider placing interactive services within the relevant genre.

An IP services provider suggested that interactive services should be located after all mainstream TV services and that this latter group included IP delivered broadcast quality channels. TP Vision suggested that Adult services should come after interactive services in the listing and an individual pointed out that DMOL's proposal positioned the BBC interactive service currently at LCN 301 next to Adult services.

QVC questioned the value of genres on the DTT platform as there is no direct access to them and considered that DMOL's use of the genre concept is arbitrary as a number of the genres, including interactive, are not content based at all. Another respondent did not agree with any rearrangement of the LCN.

#### **Question 12 – Comments on proposals for IP delivered services**

This proposal was supported by most of the respondents who commented on it, including the majority of IP service providers (BBC, Channel 4, ITV, Arqiva, Channel 5, Freeview, TP Vision and three others). Three of these respondents (including Channel 4) while supporting the proposal for the present suggested that this approach may need to be reconsidered at the next LCN review when it may be appropriate to consider placing IP services within the relevant genre. The BBC emphasised that while DMOL should reserve a number range, it should leave it to the IP service provider to allocate numbers within the range.

All of the IP service providers who responded were concerned that reserving 100 LCNs may not be adequate for the volume of IP services likely to be available, and suggested that DMOL may need to reserve a further block of 100 to 200 LCNs. One IP service provider, BT Vision, argued that it would be preferable to allocate a block of LCNs at the end of each of the relevant genres, General Entertainment, HD, Children's News and Adult for IP services, rather than reserving a single block of LCNs. BT Vision argued that this would be more logical and intuitive for IP platform viewers and that there would be no material impact for viewers without IP connected equipment. It provided a proposed numbering scheme for LCNs to achieve this. It suggested that if DMOL wished, despite these arguments, to reserve a single block of LCNs this should be positioned as close as possible to broadcast delivered channels, after the News and before the Adult and Text genres.

One individual suggested allocating the LCN 900 to 999 range, rather than using a number range that might otherwise be used for broadcast delivered channels. Sky stressed that it is not appropriate for DMOL to manage the allocation of LCNs for channels delivered over IP. A channel provider questioned whether the definition of IP services included MHEG and connected TV services, and was also concerned that channels further up the EPG could link to associated IP delivered services, giving them unfair prominence and raising competition concerns. QVC said the proposal was not supported by evidence and questioned how the allocation of LCNs to individual IP channels would be managed, if not by DMOL. It argued that deciding how IP channels' LCNs should be incorporated into the DMOL LCN map required a separate detailed consultation.

### **Question 13 – Views on DMOL's overall LCN proposal and suggestions for alternative proposals**

There was a wide range of points made in response to the overall proposal, together with a number of suggestions for alternative proposals and for future reviews.

#### **Q13.1 General comments on this review**

Channel 5 and TP Vision said they would have preferred a wider ranging review now, with a greater focus on channel families or viewing share as a means of organising the General Entertainment genre. They were both disappointed that DMOL had not proposed the creation of a Pay genre. Channel 5 and one individual respondent would have preferred DMOL to propose the creation of a Shopping genre.

Others made specific alternative proposals. These included: the creation of a new genre for time-shifted channels, which was supported by those concerned about pressure on the size of the General Entertainment genre (including QVC, Channel 5 and one other); the integration of MHEG delivered services into the relevant genre (Connect TV); and the integration of IP delivered channels into the relevant genre (BT Vision). Two respondents (Sky and QVC) who questioned the value of genres on a platform where it is not possible to access genres directly, said that DMOL should deal with the problem of genre overflow by ignoring genres, allocating the next available vacant LCN and periodic shuffling up of

channels to close gaps. This would be less disruptive to viewers and would be FRND. Some respondents, including Sky and QVC, questioned DMOL's assumptions about the likely growth of the General Entertainment genre and hence the need for significant expansion in the size of the General Entertainment LCN range.

Sky and QVC rejected DMOL's proposals and argued that there was a lack of justification or objective evidence base for them and that in particular DMOL had not considered whether there were less disruptive alternative means of achieving its desired aims and had not analysed the proposals in terms of their cost and benefit and their impact on winners and losers. It was argued that changes to the EPG should be considered only when they can clearly be shown to be in the interests of viewers, can be objectively justified and where there are no less disruptive alternatives to meeting legitimate aims. Given the potentially significant impact on advertising revenue and the disruption to viewers, DMOL had failed to make the case for the changes proposed and had not shown why it is appropriate (fair and reasonable) to move existing channels down the EPG in order to accommodate changes that will do little if anything to improve the viewer experience. By implementing its proposals, DMOL would not be acting in an FRND manner.

### **Q13.2 Comments on the content and scope of future reviews**

While accepting the proposals that DMOL is making in the current review, a number of respondents made suggestions for the approach to be taken to future reviews and possible proposals to incorporate. The BBC, Freeview and Channel 5 suggested that as the number of channels on the platform grows and other platforms develop, future reviews would need to be more wide ranging in order for DTT to remain competitive as a platform and that DMOL should consider reorganising the General Entertainment genre to make it more channel family led. The BBC and Channel 5 suggested that a future review should revisit the idea of creating a Shopping genre. Two respondents (Channel 4 and one other) suggested that a future review should consider the integration of IP channels into their relevant genres.

The BBC also suggested that in a future review DMOL should ensure that all PSB channels were positioned at the head of their respective genres in order to ensure appropriate prominence.

By contrast, other respondents suggested limiting the scope of future reviews. Arqiva suggested that DMOL should indicate now that it did not intend to revisit the issue of creating a Shopping genre. COBA expressed concern that DMOL might revisit some proposals, such as that for a Shopping genre, and Discovery also expressed concern at the prospect of further wide ranging reviews. If DMOL did make further wide ranging proposals in future reviews, they would need to be supported by robust evidence on viewer preferences and accompanied by evidence on the impact of the changes proposed on channels on the platform.

Three other channels, (QVC and two others) made the point that further short term change would be undesirable and that frequent reviews result in considerable commercial uncertainty and jeopardise investment by channels which are concerned their LCN or genre might change. They opposed the two to four year timeframe between reviews and called for

a longer period between reviews, at least five years in one case, with a far longer lead time before implementation. QVC suggested that consultations should only be held when due consideration has been given to the need for investment certainty and that the timing of consultations should be more closely linked to the cycle for investment in DTT multiplex capacity.

### **Q13.3 Technical points**

Freeview suggested that it would like to see DMOL do more work on the possibility of creating direct access genres. TP Vision was concerned about the use of a mixture of 2 digit and 3 digit LCNs as a result of DMOL's proposals, which might affect the time taken to access different services. It would have preferred to see only 3 digit LCNs used on the platform. The DTG supported DMOL's use of DTT platform features to improve the viewing experience, both day to day and as changes are made. These include MHEG pop ups, the use of bookend channels and Network Change Notifier descriptors. It stressed the importance of the liaison process for technical change management with DTG.

### **Q13.4 Management and constitution of DMOL**

A number of respondents unconnected with DMOL and its shareholders made comments on the management and constitution of DMOL in response to Question 13. As these comments overlap considerably with comments made in relation to DMOL's LCN Policy they are summarised in the next section of this Annex which deals with comments on the LCN Policy and DMOL's organisation.

### **Q13.5 Comments on the consumer research**

One respondent opposed to the proposals being made by DMOL believed that the consumer research and its interpretation was flawed and that the platform should continue to evolve organically. It had commissioned a critique of the research which made a number of points: the qualitative sample was too small and un-representative, it had been used excessively to interpret the quantitative research; the presentation of the quantitative data was biased; there was no explanation of why and when the seventh wave of research was conducted; it questioned the analysis of the quantitative research into different age brackets. It concluded that the research had failed to meet its objectives, had been conducted without collaboration with independent channels and should be redone.

## **Question 14 – Respondents’ views on whether DMOL’s proposals make adequate provision for future demand for LCNs**

Responses are summarised by genre below.

### **Q14.1 General Entertainment**

There were a number of questions raised about the level of demand for General Entertainment LCNs forecast by DMOL. The BBC, ITV, Channel 4, Channel 5 and TP Vision supported the approach taken by DMOL. Arqiva and Freeview suggested that DMOL review its forecast of General Entertainment demand again as, if 18 additional LCNs would suffice, it might be possible to accommodate future demand without the need to move the Children’s and News genres.

Three respondents, including Sky and QVC, challenged DMOL’s assumptions or asked questions about them: one suggested that most new demand in future would come from IP delivered channels rather than broadcast, given their lower costs of distribution, and argued that DMOL had over-estimated broadcast channel demand; two suggested that DMOL’s assumptions on the supply of new capacity were over optimistic as DMOL had not anticipated the introduction of new more efficient coding technologies or significant improvements in compression; another asked for further detail on the capacity assumptions made by DMOL.

Sky and QVC pointed out that DMOL’s conclusions on the size of this genre were in part a result of its proposal to incorporate local services into the General Entertainment genre, a proposal they did not support, and that if a separate Local genre was retained, this would limit the need for further General Entertainment LCNs and might help avoid the proposed move of other genres.

### **Q14.2 HD**

Opinions on this genre differed, with the BBC agreeing that DMOL’s assumptions were realistic, some respondents suggesting that DMOL had under-estimated HD LCN demand, and some suggesting that HD channels should be merged into the relevant content genres and the HD genre abolished entirely.

### **Q14.3 Children’s and News**

The only respondents commenting specifically on these genres (BBC, ITV, Channel 4 and Arqiva) agreed that DMOL’s proposals made adequate provision for these genres.

#### Q14.4 IP Services

As mentioned above, all the IP service providers who responded to the consultation suggested that a 100 LCN range was inadequate and that DMOL should allocate a range of at least 200 LCNs.

One respondent did not believe that DMOL can accurately predict the development of the market over the next two to four years and did not agree with any rearrangement of the LCN.

#### Question 15 – Views on whether DMOL should improve the navigability of the platform

Most respondents who touched on this issue agreed that navigability would become increasingly important and that DMOL should try to improve the navigability of the platform (BBC, ITV, Channel 4, Arqiva, Discovery, Freeview and three others).

Opinion was divided as to how widely bookend channels should be used, with ITV, Arqiva and Channel 5 suggesting that given DMOL's other proposals they were not needed other than for the adult services as they could not be used for the General Entertainment genre and other genres were too small to merit their use. Two respondents opposed the use of bookends at all (TP Vision and one other); one suggesting they make the platform cluttered and disorganised and the other commenting that bookends take up valuable screen space on the channel display and are confusing to viewers with accessibility issues. TP Vision suggested that navigability is an area DMOL should leave to manufacturers to allow them to differentiate themselves. One individual pointed out that the carriage arrangements for bookends would need to be considered as not all households can receive all six multiplexes, and suggested that use of an information page would be preferable.

Those who commented on it (BBC, Arqiva) supported the proposal to use an information page at LCN 100.

Six respondents (Sky, QVC, two other organisations and two MPs) suggested that DMOL had over-estimated the importance of genre based navigation and/or that there was no evidence that viewers are concerned about navigability. They felt that there is no evidence that bookends improve navigability. QVC was concerned that the introduction of bookends might affect the capacity of the platform or the LCNs allocated to channels.

#### Question 16 – Views on whether DMOL should reorder the General Entertainment genre by channel family

Most respondents were against a reorganisation of the General Entertainment genre by channel family, many strongly so, at any stage. Only two respondents (Channel 5 and TP Vision) felt that such a reorganisation should have been considered and proposed in the current review. ITV and Channel 4 suggested there was little viewer demand for such a reorganisation and given the major business implications for General Entertainment

channels it would be unwise to consider it without stronger research support. The BBC and Freeview suggested that such a reorganisation should be considered in a future review and that DMOL should undertake further research to understand the consumer appeal, benefit and usefulness of channel families. They cited the Freesat platform as an example of how a channel family approach could work.

Channels unconnected with the DMOL shareholders were strongly against a reorganisation by channel families (QVC, Discovery, COBA, four others and three MPs) believing that it would advantage the PSB channel families and DMOL's shareholders at the expense of independent channels. They said that it would be commercially very damaging to the independent channels and to diversity on the platform and there was no evidence that such a reorganisation would benefit viewers or that there was consumer demand for it. One pointed out that such a reorganisation would discriminate against 'singleton' channels. Another pointed out that unless channels with PSB status are treated separately from the non-PSB channels owned by PSB parents, a channel family based reorganisation would benefit only the PSB channel families. They suggested that such a reorganisation would raise competition issues and would be contrary to FRND principles. They pointed out that the Freesat platform is controlled by two of the PSBs and that the Freesat channel line-up is very beneficial to them.

### **Question 17 – Views on whether DMOL should return to the issue of reordering by channel family in a future review**

Most respondents felt that DMOL should not return to this issue. Arqiva suggested that the concept of channel families is flawed on the DTT platform where LCN capacity is more limited, as it is too difficult to decide who qualifies for 'channel family' treatment, how many LCNs per family should be allocated and how to deal with family LCN 'overflows'. The use of channel families is also potentially inconsistent with the use of LCNs 1 to 5 for the originally analogue PSBs.

The BBC and Freeview supported a return to the issue in a future review while ITV, Channel 4 pointed out that any return to this issue would need to be based on research which indicated much stronger demand from viewers than today.

The BBC suggested that any future reorganisation should consider three principles: appropriate prominence for all PSBs by positioning them at the top of the relevant genre, audience expectation of a logical ordering of channel families, informed by research and the hierarchy deployed on Freesat, and the impact on channel providers. Channel 5 suggested that the principles should include viewer preference, ease of navigation and reasonable expectations, and that DMOL should consider devising a listings regime from first principles.

One of those opposed to revisiting the issue, QVC, pointed out that repeatedly consulting on issues that have been rejected in the past does not provide independent channels with appropriate certainty for their investments and that the uncertainty creates a barrier to entry.

## **Question 18 – Comments on the proposed implementation timing**

The great majority of respondents who commented on it were content with the proposed implementation timing.

Of those who were not happy with the proposed timing, one channel suggested that in general there should be two years' warning of any changes to allow channels to adjust their business models. Another channel also suggested that the proposed implementation timing was too fast. DMOL had left insufficient time between the close of the consultation and the proposed timing of the statement to respond to and incorporate feedback from the consultation in a constructive manner, time was needed for further research and a further timetable should be developed and published. A third respondent suggested deferring the changes until January 2013 to provide an adequate notice period for channel providers after the publication of the statement.

## **Question 19 – Comments on the proposed communications plan**

The great majority of respondents who commented on it also supported the proposed communications plan. The BBC proposed some additions to the proposed plan to deal with messaging to the children's audience.

The RNIB pointed out that on-screen MHEG messages are not accessible to partially sighted people, and suggested that there should be on-screen announcements, timed to reach the older audience where the majority of partially sighted viewers are found. It called for support from DMOL to train and staff the RNIB helpline appropriately if it was not possible to make on screen announcements targeted at this audience.

A channel provider said it would welcome DMOL consulting with broadcasters independent of its shareholders in future. TP Vision suggested that the approach to communication should be discussed with manufacturers. Another channel provider suggested that the communications plan was inadequate and asked for further detail on a number of points. It suggested supplementing the plan with advertisements on Google and detailed information on PSB channel websites explaining the channel moves. A further channel provider suggested that a press release to the media would be inadequate and that DMOL should fund a mass-media campaign. It also asked DMOL to confirm that it would meet all reasonable costs incurred by channel providers in making the listing changes.

### **3. Consultation responses dealing with DMOL's organisation and its LCN policy**

#### **3.1 Introduction**

This section of the annex summarises the consultation responses relating to DMOL's LCN Policy. A number of respondents also commented more generally on the way in which DMOL is organised and its incentives, and these responses are also summarised here. The comments below have been summarised by general theme rather than by consultation question.

#### **3.2 Comments on the regulation and governance of DMOL**

COBA was concerned about what it saw as the anomalous nature of DMOL's statutory regulation. While it welcomed DMOL having a more direct relationship with channels on the platform, it considered that DMOL should be subject to Ofcom's EPG code. This, COBA argued, will help ensure that DMOL demonstrates transparency and fairness, will improve confidence in DMOL and make it less subject to accusations of bias. Some channel providers (Sky and one other) also argued that DMOL should be regulated directly by Ofcom and should itself be subject to Ofcom's EPG code rather than accountable only via its multiplex operator shareholders who are subject to the code.

Comments were made about the potential for a conflict of interest between DMOL and the channel interests of its shareholders. There was a concern from some of the shopping channel providers and other respondents supporting their interests (Electronic Retailing Association, various MPs and two others) that DMOL's shareholding structure means that it is likely to act in the interests of the public service broadcaster shareholders rather than in the interests of the platform as a whole and that DMOL in practice does not act in the interests of independent channels on the platform. Some respondents argued from this that any changes proposed by DMOL to the LCN listing should be subject to regulatory approval by Ofcom or an independent 'fairness' test. Another suggestion was that the conflict of interest issue could be addressed by making changes to the composition of DMOL's board, making it more representative of the channels on the platform by including representation from channels independent of DMOL's shareholders.

QVC pointed out that DMOL's PSB shareholders are both providers of capacity and providers of channels and in a position to control the platform while also benefiting from the impact of policy changes on their own channels. This means that the DMOL shareholders need to pay particular regard to the need to comply with the FRND obligations of the EPG code and with FRND obligations under s310 CA and their multiplex licences. Without a clear policy on how it will comply with its FRND obligations, there is a risk that DMOL will exercise its discretions in such a way as to benefit shareholder channels and to the detriment of independent channels. It argued that DMOL should focus on the maximisation of overall DTT viewership and revenues in the interests of the platform as a whole.

Another channel provider suggested that DMOL's discretion should be restricted, as a wide discretion leads to risk for channel providers and that any changes to the listings should be subject to an independent 'fairness' test. If a channel is damaged by an LCN change outside their control the multiplex agreement should provide for compensation.

### **3.3 General comments on the operation of the LCN policy, and on whether its effects are fair, reasonable and non-discriminatory**

Some respondents were critical of the general structure of DMOL's LCN policy (see above). Some channel providers (QVC and one other) also argued that a number of specific aspects of the policy do not satisfy FRND requirements and that DMOL's proposals in general further the interests of its shareholders rather than fulfilling any objective requirements for the operation of the platform.

Aspects of the policy that were criticised on this ground were: Channel providers have to secure capacity without knowing which LCN they will be allocated. The auction for multiplex carriage is not transparent – so access to the platform is not FRND. More prominent LCNs are associated with higher viewing shares, but there is no mechanism to compensate channels or allow them to renegotiate their carriage terms if they are moved to a less prominent LCN. The current allocation of LCNs and operation of the associated channels rule are not FRND - the allocation of LCNs should be mechanistic. The right of appeal to the chairman is not FRND because of the chairman's conflict of interest – the directors have an incentive to favour their own channels over independent channels. It is not FRND to make it a condition of the supply of technical platform services (TPS) that the channel provider enters into a TPS contract with DMOL which gives it greater discretion over the allocation of LCNs.

### **3.4 Comments on the associated channels rule**

All DMOL's shareholders and some other respondents (Channel 5, Freeview, TP Vision and one other) agreed that the purpose of the associated channels rule should be to aid viewer navigation by grouping similar channels together. However, some other channel providers were critical of the way in which the rule has operated in the past.

QVC argued that the rule has operated in the past so as to disproportionately disadvantage independent channels and that it is not compatible with FRND obligations as it discriminates in favour of DMOL's shareholders and against independent channels. The Sky platform was cited as an example of a platform without such a rule which allocates LCNs on a first come first served basis. Another channel provider argued that the practical effect of the rule has been to promote clusters of PSB family channels, in particular time-shifted channels, and that this harms the diversity of the platform. Two other channel providers suggested that the rule should draw a distinction between PSB channels and their family of channels; if not the rule simply promotes low LCN positions for the channel families of PSB services and therefore operates unfairly. Another respondent pointed out that since viewers do not

believe there is a navigation problem on the platform the rule is unnecessary and should be removed completely. Others argued for the removal of the rule on the grounds that it is unfair and anti-competitive (QVC, some MPs supporting a shopping channel).

There was a variety of views on whether the rule should operate over a maximum range of LCNs. DMOL's shareholders were split as to whether the range should be limited or not, as were other respondents, with some arguing for complete abolition of the rule, some for operation over a limited range of LCNs (BBC, ITV, Channel 5) and some in favour of no limitation on the range over which the rule operates (Arqiva, Channel 4, QVC, TP Vision and two others).

### **3.5 Comments on the circumstances under which channel swaps within a portfolio should be allowed**

DMOL's shareholders were divided on whether channel swaps within a provider's portfolio should be allowed, with the BBC and Channel 4 supporting swaps which better meet audience expectations and would aid navigation – for example a swap that positioned ITV2 with a lower LCN than ITV3. Arqiva and ITV did not support swaps, with concerns about fairness and the risk of disruption to viewing habits without benefits to the consumer. There was also a concern that DMOL and not channel providers should control the allocation of LCNs to particular channels.

Other respondents were also divided, with Channel Five opposing any relaxation of the rules on channel swaps, QVC arguing that swaps deliver no proven benefits to viewers and are not FRND, and others (Freeview, TP Vision and two others) more supportive of swaps provided that they are clearly of benefit to the viewer and improve the viewing experience – perhaps through the application of guidelines on when swaps are permissible.

### **3.6 Other comments on the proposed amendments to the LCN policy**

Further specific comments or proposals made on the policy were:

#### **Clauses 4 and 5**

The BBC welcomed the increased clarity in the policy over the listing of PSB channels and suggested that the policy should explicitly allocate PSB channels the lowest available vacant LCN in the appropriate genre and give them first refusal over any vacant lower LCN.

#### **Clause 7**

Sky expressed concern at the proposed widening of DMOL's discretion in the 'Evolution of channels', clause 7, as it might lower the threshold (including in relation to broadcast hours)

at which a channel risks being viewed as having evolved into a new channel and therefore losing its LCN. This it argued could reduce channels' ability and incentive to evolve their content over time as viewers' tastes evolve and hence narrow choice on the platform. Another channel provider asked for further clarification on how in relation to this clause DMOL would respond to changes in channels' broadcast hours.

### **Clause 8**

A channel provider requested clarification on when and how the shuffling up process would operate and asked whether channel providers could request a shuffle up.

### **Clause 9**

Channel 5 suggested that DMOL should inform all LCN stakeholders directly when it was undertaking the 'light' consultation process so that they could comment if they wish. It felt that a notice on the DMOL website was not sufficient.

### **Clause 10**

In relation to appeals, Channel 5 felt that any appeal should be considered by the whole DMOL board, rather than dealt with by the chairman alone. QVC criticised the appeal to the chairman as it felt (s)he would have a conflict of interest, but did not propose an alternative. Another channel provider felt that the appeal process should include an appeal to Ofcom.

### **Clause 11**

A channel provider suggested that DMOL charges to channel providers should be more explicit or included in multiplex costs.

### **Clause 13**

A channel provider argued that reviews of the LCN policy should be less frequent than every two years as they result in commercial risk for channel providers.

## **3.7 Comments on the proposed genre definitions**

In general DMOL's shareholders and the other respondents to the consultation supported the proposed genre definitions. There were some comments made on aspects of particular genre definitions.

### Use of the term ‘transactional channels’

Shopping channel providers were unhappy with the use of the term ‘transactional channel’ to group shopping with other transactional services, such as adult channels, and argued that if shopping channels were treated as a distinct genre, so too should other categories of transactional channel, such as dating or gambling channels.

### Definition of the Shopping genre

One shopping channel said that it considered shopping as a form of entertainment rather than a separate genre.

Two channel providers argued that if shopping was to be treated as a distinct genre, it would be unfair to allow some channels to show segments of transactional programming at night, such as teleshopping, while remaining within the definition of the General Entertainment genre. One suggested that since general entertainment channels with low LCN numbers achieve high viewing shares, in any genre definition, DMOL needs to recognise the multiplier effect that low LCN position has on boosting the transactional business of a low LCN channel, rather than simply considering the times at which transactional content is broadcast.

### Definition of adult channels

One channel objected to the definition of adult channels, arguing that it has no basis in law and does not correspond to the definition of an adult channel used in other parts of the EC. The channel also questioned why services which showed some BBFC-18 rated material after the watershed were classified as General Entertainment rather than included in the Adult genre.

### General comments on the genre definitions

Two channel providers, QVC and Sky, argued that DMOL fails to define genres consistently. While arguing that the genres on the DTT platform should be content based, DMOL has in fact defined a number of genres which are not content based at all such as HD, Text and MHEG services, Interactive and Radio.

Some channel providers (QVC, Sky and one other) also disputed the value of genres on the DTT platform as, unlike other platforms, there is no direct access to them.

## Annex 2: LCN listing to be implemented on 19 September 2012

This LCN list is for post-switchover regions. Pre-switchover regions will follow this listing but do not always carry the same services.

LCN	Current service (as of 23 July 2012)	Service at 19 September 2012	Genre at 19 September 2012	Mux	Changes made
1	BBC ONE	BBC ONE	General entertainment	BBC A	
1	BBC ONE NI	BBC ONE NI	General entertainment	BBC A	
1	BBC ONE Scot	BBC ONE Scot	General entertainment	BBC A	
1	BBC ONE Wales	BBC ONE Wales	General entertainment	BBC A	
2	BBC TWO	BBC TWO	General entertainment	BBC A	
2	BBC TWO NI	BBC TWO NI	General entertainment	BBC A	
2	BBC TWO Scot	BBC TWO Scot	General entertainment	BBC A	
2	BBC TWO Wales	BBC TWO Wales	General entertainment	BBC A	
3	ITV1	ITV1	General entertainment	D34	
3	ITV1 Wales	ITV1 Wales	General entertainment	D34	
3	STV	STV	General entertainment	D34	
3	UTV	UTV	General entertainment	D34	
4	Channel 4	Channel 4	General entertainment	D34	
4	S4/C	S4/C	General entertainment	D34	
5	Channel 5	Channel 5	General entertainment	D34	
6	ITV 2	ITV 2	General entertainment	D34	
7	BBC THREE	BBC THREE	General entertainment	BBC A	
8	BBC ALBA	BBC ALBA	General entertainment	BBC A	
8	Channel 4 (in Wales)	Channel 4 (in Wales)	General entertainment	D34	
8	Local PSB England & NI	Local PSB England & NI	General entertainment	Local	
9	BBC FOUR	BBC FOUR	General entertainment	BBC A	
10	ITV3	ITV3	General entertainment	SDN	
11	Pick TV	Pick TV	General entertainment	ARQ A	
12	Yesterday	Yesterday	General entertainment	ARQ B	
13	Channel 4+1	Channel 4+1	General entertainment	D34	
14	More Four	More Four	General entertainment	D34	
15	Film4	Film4	General entertainment	ARQ B	
16	QVC	QVC	General entertainment	SDN	
17	G.O.L.D.	G.O.L.D.	General entertainment	SDN	
18	4Music	4Music	General entertainment	ARQ B	
19	Dave	Dave	General entertainment	ARQ A	
20	Really	Really	General entertainment	ARQ A	
21	VIVA	VIVA	General entertainment	ARQ B	
22	Ideal World	Ideal World	General entertainment	ARQ B	
23	bid	bid	General entertainment	SDN	
24	ITV4	ITV4	General entertainment	ARQ B	
25	Dave ja vu	Dave ja vu	General entertainment	ARQ A	
26	Home	Home	General entertainment	SDN	
27	ITV2 +1	ITV2 +1	General entertainment	SDN	
28	E4 (in Wales)	E4 (in Wales)	General entertainment	SDN	
28	E4	E4	General entertainment	D34	
29	E4+1	E4+1	General entertainment	ARQ A	
30	5*	5*	General entertainment	SDN	
31	5 USA	5 USA	General entertainment	SDN	
32	Big Deal	Big Deal	General entertainment	ARQ A	
33	ITV1 +1	ITV1 +1	General entertainment	D34	
33	STV+1	STV+1	General entertainment	D34	
33	UTV+1	UTV+1	General entertainment	D34	
34	ESPN	ESPN	General entertainment	SDN	
35	QVC Beauty	QVC Beauty	General entertainment	ARQ B	

36	Create & Craft	Create & Craft	General entertainment	ARQ A	
37	price drop	price drop	General entertainment	ARQ A	
38	QUEST	QUEST	General entertainment	SDN	
39	The Zone	The Zone	General entertainment	SDN	
40	Rocks & Co 1	Rocks & Co 1	General entertainment	ARQ B	
41	Sky Sports 1	Sky Sports 1	General entertainment	ARQ B	
42	Sky Sports 2	Sky Sports 2	General entertainment	ARQ B	
43	Gems TV	Gems TV	General entertainment	ARQ A	
44	Channel 5+1	Channel 5+1	General entertainment	SDN	
45	Local PSB Scotland & Wales	Local PSB Scotland & Wales	General entertainment	Local	
46	Challenge	Challenge	General entertainment	ARQ A	
47	4 Seven	4 Seven	General entertainment	ARQ B	
48		Food Network	General entertainment	ARQ A	CHANGE OF LCN
49	Food Network	The Jewellery Ch.	General entertainment	SDN	CHANGE OF LCN
50	BBC One HD		General entertainment		
51	ITV1 HD		General entertainment		
51	STV HD		General entertainment		
52	Channel 4 HD		General entertainment		
53	S4C Clirlun		General entertainment		
54	BBC HD		General entertainment		
55			General entertainment		
56			General entertainment		
57			General entertainment		
58			General entertainment		
59			General entertainment		
60	The Jewellery Ch.		General entertainment		
61			General entertainment		
62			General entertainment		
63			General entertainment		
64			General entertainment		
65			General entertainment		
66			General entertainment		
67			General entertainment		
68			General entertainment		
69			General entertainment		
70	CBBC Channel		General entertainment		
71	CBeebies		General entertainment		
72	CITV		General entertainment		
73			General entertainment		
74			General entertainment		
75			General entertainment		
76			General entertainment		
77			General entertainment		
78			General entertainment		
79			General entertainment		
80	BBC News		General entertainment		
81	BBC Parliament		General entertainment		
82	Sky News		General entertainment		
83			General entertainment		
84			General entertainment		
85	Russia Today		General entertainment		
86			General entertainment		
87	COMMUNITY		General entertainment		
88			General entertainment		
89	Al Jazeera Eng		General entertainment		
90			General entertainment		
91	ADULT Section		General entertainment		
92	Television X		General entertainment		
93	ADULT smileTV2		General entertainment		

94	ADULT smileTV3		General entertainment		
95	ADULT Babestation		General entertainment		
96	ADULT Party		General entertainment		
97	ADULT Blue		General entertainment		
98	ADULT Babestation2		General entertainment		
99	ADULT Playboy		General entertainment		
100	ADULT Section		Navigation page		
101	Teletext Holidays	BBC One HD	HD	BBC B HD	CHANGE OF LCN
102	Rabbit	BBC HD	HD	BBC B HD	CHANGE OF LCN
103	Gay Rabbit	ITV1 HD	HD	BBC B HD	CHANGE OF LCN
103		STV HD	HD	BBC B HD	CHANGE OF LCN
104	1-2-1 Dating	Channel 4 HD	HD	BBC B HD	CHANGE OF LCN
105	BBC Red Button	S4C Clirlun	HD	BBC B HD	CHANGE OF LCN
106	Mail Travel TV		HD		
107			HD		
108	Sky Text		HD		
109			HD		
110	VISION		HD		
111	CCTV		HD		
112	Sports		HD		
113	CONNECT 1		HD		
114	CONNECT 2		HD		
115	CONNECT 3		HD		
116	Racing TV		HD		
117	The Space		HD		
118			HD		
119			HD		
120			HD		
121		CBBC Channel	Children's	BBC A	CHANGE OF LCN
122		CBeebies	Children's	BBC A	CHANGE OF LCN
123		CITV	Children's	SDN	CHANGE OF LCN
124			Children's		
125			Children's		
126			Children's		
127			Children's		
128			Children's		
129			Children's		
130			Children's		
131		BBC NEWS	News	BBC A	CHANGE OF LCN
132		BBC Parliament	News	BBC A	CHANGE OF LCN
133		Sky News	News	ARQ A	CHANGE OF LCN
134		Al Jazeera 6-8	News	ARQ B	CHANGE OF LCN
135		Al Jazeera Eng	News	ARQ B	CHANGE OF LCN
136		Russia Today	News	ARQ B	CHANGE OF LCN
137		COMMUNITY	News	ARQ B	CHANGE OF LCN
138			News		
139			News		
140			News		
141			News		
142			News		
143			News		
144			News		
145			News		
146			News		
147			News		
148			News		
149			News		
150			News		
170		Bookend slate	Adult	SDN	CHANGE OF LCN
171		Television X	Adult	SDN	CHANGE OF LCN

172	ADULT smileTV2	Adult	ARQ B	CHANGE OF LCN
173	ADULT smileTV3	Adult	ARQ A	CHANGE OF LCN
174	ADULT Babestn	Adult	ARQ B	CHANGE OF LCN
175	ADULT PARTY	Adult	ARQ A	CHANGE OF LCN
176	ADULT Blue	Adult	ARQ A	CHANGE OF LCN
177	ADULT Babestn2	Adult	ARQ A	CHANGE OF LCN
178	ADULT Playboy	Adult	SDN	CHANGE OF LCN
180		Adult		
181		Adult		
182		Adult		
183		Adult		
184		Adult		
185		Adult		
186		Adult		
187		Adult		
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190		Adult		
191		Adult		
192		Adult		
193		Adult		
194		Adult		
195		Adult		
196		Adult		
197		Adult		
198		Adult		
199	Bookend slate	Adult	ARQ B	CHANGE OF LCN
200	BBC Red Button	Text services	BBCA	CHANGE OF LCN
201	Teletext Hols	Text services	SDN	CHANGE OF LCN
202	Rabbit	Text services	D34	CHANGE OF LCN
203	Gay Rabbit	Text services	D34	CHANGE OF LCN
204	1-2-1 Dating	Text services	SDN	CHANGE OF LCN
205	Mail Travel	Text Services	SDN	CHANGE OF LCN
206	Sky Text	Text services	ARQ A	CHANGE OF LCN
207		Text services		
208		Text services		
209		Text services		
210		Text services		
211		Text services		
212		Text services		
213		Text services		
214		Text services		
215		Text services		
216		Text services		
217		Text services		
218		Text services		
219		Text services		
220		Text services		
221		Text services		
222		Text services		
223		Text services		
224		Text services		
225	VISION	MHEG services	ARQ B	CHANGE OF LCN
226	CCTV	MHEG services	ARQ B	CHANGE OF LCN
227	Sports	MHEG services	ARQ B	CHANGE OF LCN
228	Connect 1	MHEG services	SDN	CHANGE OF LCN
229	Connect 2	MHEG services	SDN	CHANGE OF LCN
230	Connect 3	MHEG services	SDN	CHANGE OF LCN
231	Racing TV	MHEG services	ARQ B	CHANGE OF LCN
232	The Space	MHEG services	BBC B HD	CHANGE OF LCN

<b>299</b>			MHEG services		
<b>300</b>			Interactive		
<b>301</b>	301	301	Interactive	BBC A	
<b>302</b>	302	302	Interactive	BBC A	
<b>303</b>		301HD	Interactive	BBC B HD	CHANGE OF LCN
<b>304</b>	301 HD	Channel Zero	Interactive	ARQ B	CHANGE OF LCN
<b>305</b>		TOPUP Anytime1	Interactive	SDN	CHANGE OF LCN
<b>306</b>	Channel Zero	TOPUP Anytime3	Interactive	SDN	CHANGE OF LCN
<b>307</b>	TOPUP Anytime 1	TOPUP Anytime5	Interactive	SDN	CHANGE OF LCN
<b>308</b>		TOPUP Anytime6	Interactive	SDN	CHANGE OF LCN
<b>309</b>	TOPUP Anytime 3		Interactive		
<b>310</b>	TOPUP Anytime 5		Interactive		
<b>311</b>	TOPUP Anytime 6		Interactive		
<b>312</b>			Interactive		
<b>313</b>			Interactive		
<b>314</b>			Interactive		
<b>315</b>			Interactive		
<b>316</b>			Interactive		
<b>317</b>			Interactive		
<b>318</b>			Interactive		
<b>319</b>			Interactive		
<b>320</b>			Interactive		
<b>400</b>			IP Delivered		
<b>499</b>			IP Delivered		
<b>700</b>	BBC Radio 1	BBC Radio 1	Radio	BBC A	
<b>701</b>	BBC R1X	BBC R1X	Radio	BBC A	
<b>702</b>	BBC Radio 2	BBC Radio 2	Radio	BBC A	
<b>703</b>	BBC Radio 3	BBC Radio 3	Radio	BBC A	
<b>704</b>	BBC Radio 4	BBC Radio 4	Radio	BBC A	
<b>705</b>	BBC R5L	BBC R5L	Radio	BBC A	
<b>706</b>	BBC R5SX	BBC R5SX	Radio	BBC A	
<b>707</b>	BBC 6 Music	BBC 6 Music	Radio	BBC A	
<b>708</b>	BBC Radio 4 Ex	BBC Radio 4 Ex	Radio	BBC A	
<b>709</b>	BBC Asian Net.	BBC Asian Net.	Radio	BBC A	
<b>710</b>	BBC World Sv.	BBC World Sv.	Radio	BBC A	
<b>711</b>	The Hits Radio	The Hits Radio	Radio	ARQ B	
<b>712</b>	Smash Hits!	Smash Hits!	Radio	ARQ B	
<b>713</b>	Kiss	Kiss	Radio	ARQ B	
<b>714</b>	heat	heat	Radio	ARQ B	
<b>715</b>	Magic	Magic	Radio	ARQ B	
<b>716</b>	Q	Q	Radio	ARQ B	
<b>718</b>	SMOOTH RADIO	SMOOTH RADIO	Radio	ARQ B	
<b>719</b>	BBC R Scotland	BBC R Scotland	Radio	BBC A	
<b>719</b>	BBC Radio Ulster	BBC Radio Ulster	Radio	BBC A	
<b>719</b>	BBC Radio Wales	BBC Radio Wales	Radio	BBC A	
<b>720</b>	BBC R n Gaidheal	BBC R n Gaidheal	Radio	BBC A	
<b>720</b>	BBC Radio Cymru	BBC Radio Cymru	Radio	BBC A	
<b>720</b>	BBC Radio Foyle	BBC Radio Foyle	Radio	BBC A	
<b>722</b>	Kerrang!	Kerrang!	Radio	ARQ B	
<b>723</b>	talkSPORT	talkSPORT	Radio	ARQ A	
<b>724</b>	Capital FM	Capital FM	Radio	SDN	
<b>725</b>	Premier Radio	Premier Radio	Radio	ARQ B	
<b>726</b>	U105	U105	Radio	D34	
<b>727</b>	Absolute Radio	Absolute Radio	Radio	SDN	
<b>728</b>	Heart	Heart	Radio	SDN	

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## Annex 3: New DMOL LCN Policy (version 5)

# DMOL LCN Policy

Version 5, 30 July 2012

This Policy supersedes all previous versions

## 1 INTRODUCTION

- 1.1 DTT Multiplex Operators Limited (“DMOL”) is the body which allocates Logical Channel Numbers (“LCNs”) on the Digital Terrestrial Television (“DTT”) platform.
- 1.2 DMOL holds an Ofcom EPG Provider Licence and allocates LCNs to a wide range of different services on the DTT platform, e.g. television, radio, interactive and data download. For the sake of convenience, all DTT services are referred to within this Policy as ‘channels’ and those who provide such services are referred to as ‘channel providers’.
- 1.3 This DMOL LCN Policy (the “Policy”) governs the way in which the DMOL LCN Group will allocate channels into genres, and into LCNs within genres. It replaces Version 4.0 of this Policy that was published on 17<sup>th</sup> March 2010.
- 1.4 The Policy conforms with the requirements of the Communications Act 2003 and Ofcom’s Code of Practice on Electronic Programme Guides published in July 2004 (the “Ofcom EPG Code”). Within this regulatory framework, DMOL’s objective will be to apply the Policy in such a way as it considers to be for the long-term benefit of the DTT platform and in the interests of viewers (in each case as determined by DMOL members in accordance with the Policy) and in compliance with the FRND requirements of the Ofcom EPG Code.
- 1.5 For the avoidance of doubt, DMOL interprets its FRND obligation to mean that the Policy is applied consistently to all channels on or joining the platform regardless of their ownership.
- 1.6 DMOL’s terms and conditions of LCN allocation are contained within the DMOL LCN Agreement. New LCNs shall only be allocated where the relevant DMOL LCN Agreement has been signed by the channel provider; and the benefits of this Policy are only available where the DMOL LCN Agreement has been signed for all relevant channels.
- 1.7 Where there is a change of control of a channel or a channel provider, it is the responsibility of the new provider to comply with DMOL’s LCN Agreement.
- 1.8 After an LCN allocation has been made by DMOL, the LCN continues to belong to DMOL and will remain subject to its discretion and the Policy. DMOL reserves the right to move a channel onto an alternative LCN in accordance with this Policy.
- 1.9 DMOL will allocate LCNs for channels using DTT capacity only. DMOL will not allocate LCNs for any channels delivered without use of any DTT capacity, for example those that are delivered solely by IP or by any other means.
- 1.10 DMOL uses the terminology ‘lower LCNs’ to refer to lower channel numbers; i.e. smaller numbers which are further up the channel list. Conversely, ‘higher LCNs’ is used to refer to larger channel numbers which are further down the channel list.
- 1.11 For the avoidance of doubt, previous decisions of DMOL regarding the allocation of LCNs prior to the adoption of this version of the Policy will not be considered relevant in the interpretation of this Policy.

## 2 LCN APPLICATIONS

- 2.1 Any channel provider which intends to launch a channel onto the DTT platform should submit its LCN application as per the process set out in Schedule 1 (the “LCN Allocation Process”) between twelve and six weeks before the intended launch of the channel.
- 2.2 The LCN Allocation Process may change from time to time. Any amendments to Schedule 1 will be published on the DMOL website.
- 2.3 In order to be allocated an LCN, a channel provider must supply DMOL with:
  - (i) A copy of the broadcasting licence (or equivalent authorisation) permitting the broadcast of the channel on the DTT platform in the UK;
  - (ii) A letter of corroboration from the relevant multiplex operator confirming that the channel has secured the necessary capacity to broadcast on the DTT platform; and
  - (iii) Any other information as specified in the allocation process or as DMOL may otherwise reasonably request regarding the channel.
- 2.4 The channel provider is required at its cost to provide all such information as DMOL is likely to require, or specifically requests, in order for DMOL properly to consider an allocation in accordance with the Policy. The channel provider must ensure that all information provided by it or on its behalf is accurate, complete and up-to-date.
- 2.5 If the channel is a public service channel listed in s.310 of the Communications Act (2003), an LCN will be allocated in accordance with sections 4 and 5 of the Policy.
- 2.6 If DMOL deems that the channel is an associated channel, an LCN will be allocated in accordance with sections 4 and 6 of the Policy.
- 2.7 If the channel is neither a public service channel nor an associated channel, an LCN will be allocated in accordance with section 4 of the Policy.
- 2.8 Requests for an LCN made on a speculative basis (i.e. channels without confirmed genre and intended launch date) will not be considered, but DMOL will have due regard to confidentiality requirements and will permit the use of ‘working’ channel names.
- 2.9 Channel providers should notify DMOL of the intended launch date of the channel and if the intended launch date of the channel changes for any reason. If a channel provider does not launch a channel within 12 weeks of the intended launch date which was notified to DMOL, any LCN which was allocated to the channel may be withdrawn.

## 3 GENRES

- 3.1 Genres are the basis for the grouping of channels on the DTT platform in order to assist viewer navigation of content, and where deemed necessary by DMOL to protect consumers from content that may harm or offend.
- 3.2 The genres available for allocation of LCNs on the DTT platform, and the number ranges in which they will generally operate, are described in Schedule 2. Any amendments to Schedule 2 will be published on the DMOL website.
- 3.3 DMOL will generally not allocate LCNs for test channels, unless, at its discretion, it considers it appropriate to do so.

- 3.4 DMOL will not allocate LCNs for channels delivered solely by IP but commits not to allocate LCNs into the 400 to 499 range so that IP channel providers may allocate channels into this range according to their own channel allocation policy. As such DMOL takes no responsibility for channel allocation in the 400 to 499 range.
- 3.5 DMOL will not allocate LCN 0; or LCNs in the range 800 to 999 which under the DTG's D-Book are reserved for manufacturer use.
- 3.6 Channel providers should indicate in the LCN application what they consider to be the most appropriate genre for their channel according to DMOL's genre definitions, which are provided in Schedule 3 ("DMOL Genre Definitions") and as may be varied from time to time.
- 3.7 DMOL will review the proposed genre, and, in the case of channels already broadcasting on another UK TV platform, DMOL will in general make its assessment based on the content of the channel over the three month period immediately preceding the date of the LCN application.
- 3.8 DMOL will first review whether the channel might, by the type, nature, or balance of its content, meet the definition of more than one of the genres set out in Schedule 3. In such cases DMOL will apply the following hierarchy of considerations when assigning the channel into a genre:
- (i) DMOL will firstly consider whether any consumer protection issues might exist, with reference to the Ofcom Broadcasting Code or other relevant Ofcom guidance and decision documents. In particular, channels consisting predominantly of adult content (as per the genre definitions described in Schedule 3) of any type will be placed in the Adult genre.
  - (ii) DMOL will secondly consider whether the channel is video, text, interactive or radio in nature. If there are no consumer protection issues then a text, interactive or radio channel will generally be placed in the Text and MHEG, Interactive or Radio genre respectively.
  - (iii) DMOL will thirdly consider the nature of the content on the channel as per the DMOL Genre Definitions.
- 3.9 In deciding the most appropriate genre for a channel DMOL may ask the channel provider for:
- (i) Scheduling, event and synopsis information; and
  - (ii) Any other information that DMOL considers relevant.
- 3.10 DMOL may from time to time, in the context of a review of its Policy or otherwise, add, remove, merge or move genres (including creating new types of genre) in consultation with channel providers (as described in section 9 of this Policy).
- 3.11 New genres may be created where either:
- (i) There is a sufficient number of channels with a sufficiently distinct type of content to warrant the introduction of a new genre; or
  - (ii) There are other compelling reasons for the introduction of a new genre.
- 3.12 Existing genres may be merged or removed where there are no longer a sufficient number of channels to warrant a separate genre, and DMOL has reason to believe that the situation is one that will persist. This may require DMOL to reallocate LCNs in consultation with channel providers (as described in section 9 of this Policy).
- 3.13 In the event that a genre overflows its prescribed LCN range DMOL will place any additional channels of that genre launching on the platform in the most appropriate alternative location in the LCN listing or may consult with channel providers on moving the genre. Any resulting changes to the genre ranges described in Schedule 2 will be published on the DMOL website.

## **4 ALLOCATION OF LOGICAL CHANNEL NUMBERS WITHIN GENRES**

- 4.1 Unless sections 5 or 6 of this Policy apply (and unless paragraph 3.13 has been invoked), DMOL will allocate the channel the lowest available LCN at the end of the genre in which it has decided to place such channel.
- 4.2 Where DMOL is considering the allocation of LCNs within a genre to more than one channel at the same time DMOL will apply the following hierarchy of considerations:
- (i) Firstly, the applicability of section 5 to any of the channels applying for an LCN;
  - (ii) Secondly the applicability of section 6 to any of the channels applying for an LCN; and
  - (iii) Thirdly, the time order in which LCN applications were received by DMOL.
- 4.3 Once a channel has launched into its allocated LCN DMOL will not consider requests for moving to an alternative LCN unless the channel is classified as a public service channel eligible for appropriate prominence under section 5 of this Policy; or under the process for offering vacated LCNs described in section 8 of this Policy.

## **5 LISTING OF PUBLIC SERVICE CHANNELS**

- 5.1 “Public service channels” are those channels identified as such in accordance with section 310 of the Communications Act 2003. When allocating LCNs to public service channels, DMOL will seek to give “appropriate prominence” to these channels in the appropriate genre in accordance with paragraphs 2 to 4 of the Ofcom EPG Code.
- 5.2 Public service channels, in common with all channels, will first be allocated to their most appropriate genre under section 4 of this Policy.
- 5.3 Public service channels will generally be assigned the lowest available vacant LCN within their relevant genre.
- 5.4 DMOL may reserve LCNs for Local TV public service channels listed under s.310 of the Communications Act in advance of the time period described in 2.1 above.
- 5.5 Where a lower LCN number becomes available within a genre than that which is assigned to a public service channel, DMOL will offer the lower vacated LCN to the public service channel at the next lowest LCN before considering any other claims on the vacated LCN under any other section of this Policy.

## **6 ASSOCIATED CHANNELS**

- 6.1 In order to improve viewer navigation DMOL considers that it is in the best interests of viewers to group together channels which:
- (i) Are classified into the same genre; and
  - (ii) Are under common control; and
  - (iii) Where there is either common branding – and/or – a significant degree of existing or intended cross-promotion between the channels.

DMOL considers any two such channels to be “associated channels” if neither channel is listed under s.310 of the Communications Act.

- 6.2 Vacated LCNs will be offered by DMOL to associated channels in the way described in section 8 of this Policy.

## 7 EVOLUTION OF CHANNELS

7.1 DMOL accepts that any channel may evolve over time, principally either by way of:

- (i) Change of name; or
- (ii) Change of content; or
- (iii) Change of hours

and may nevertheless be considered to be the same channel.

7.2 Where any channel evolves to such an extent that DMOL considers that it should no longer be considered to be the same channel (in which case, the channel shall be a “new channel”), DMOL shall inform the channel provider in writing that it must either:

- (i) Restore the new channel to the extent necessary to satisfy DMOL that it is still the same channel as that in respect of which the original application for an LCN was made; or
- (ii) Apply for a new LCN for the new channel to be allocated in accordance with sections 3 and 4 of the Policy.

DMOL expects a response from the channel provider within four weeks of the date of the letter, and implementation of any plans to restore the New Channel to the extent necessary to satisfy DMOL that it is still the same channel within 24 weeks of DMOL’s first letter.

7.3 Any channel which evolves by way of a change of content will be moved to a new genre if its content becomes a better fit for an alternative genre under section 3 of this Policy.

7.4 In considering whether or not a channel has evolved into a new channel, DMOL will take into account the following non-exhaustive factors:

- (i) Whether the nature of a significant proportion of the content of the channel and the name of the channel have changed. If this is the case, unless there are very clear factors to show that the channel is not a New Channel, the channel will be considered to have evolved into a New Channel;
- (ii) The extent to which the type of content of the channel has changed ;
- (iii) The extent to which the broadcast hours of the channel have reduced; and
- (iv) The channel provider’s channel portfolio on other UK TV platforms.

7.5 If the channel provider does not comply with a written notice issued by DMOL under 7.2, DMOL may on four weeks written notice to the channel provider withdraw the allocation of the LCN to that channel and remove the channel to the next available LCN at the bottom of the relevant genre or to a different genre, as appropriate.

7.6 DMOL will consider applications to swap the LCNs of two associated channels (as defined in paragraph 6.1 of the Policy) where the two channels:

- (i) Are in the same genre; and
- (ii) Neither channel is a public service channel listed in s.310 of the Communications Act; and
- (iii) The channel provider submits compelling evidence to DMOL to demonstrate that doing so would result in channels being listed in an order more likely to reflect viewers’ expectations.

If DMOL agrees to a swap of LCNs for two associated channels, it will be implemented at a time to be agreed with DMOL.

See Schedule 4 for further guidance on the criteria under which DMOL will consider swapping LCNs of associated channels; and the timing of implementation.

7.7 DMOL does not permit any trading or sale of LCN positions between channel providers.

## **8 ALLOCATING VACATED LCNs IN THE SAME GENRE**

8.1 A channel provider may cease to make a channel available on an LCN for a limited period of time without that channel being considered to have been removed from the platform and its LCN withdrawn provided that the channel provider:

- (i) Notifies DMOL in writing, prior to the temporary withdrawal, of its intentions to make that channel available again within a period of 12 weeks from the point of temporary withdrawal of audio-visual content, and
- (ii) Ensures that the channel is available again within such period.

DMOL reserves the right to withdraw the LCN from the channel where the channel provider fails to resume transmission of the channel within such period.

8.2 Where a channel is withdrawn from its LCN for any reason the LCN will be offered by DMOL to channels in the following order:

- (i) Firstly, to any public service channel on a higher LCN than that which is in question (see paragraph 5.5 of this Policy); then if it remains vacated
- (ii) Secondly, to existing associated channels (as defined under paragraph 6.1) already on the platform at LCNs higher than the vacated LCN, in the following way:
  - Firstly, to a channel which is associated with the channel which is immediately above the vacated LCN;
  - Secondly, to a channel which is associated with the channel which is immediately below the vacated LCN;
  - Thirdly, to a channel which is associated with the channel which is two positions above the vacated LCN;
  - Fourthly, to a channel which is associated with the channel which is two positions below the vacated LCN;
  - And so on for up to five positions above and below the vacated LCN; and then if it remains vacated
- (iii) Finally, to any new associated channel (as defined under paragraph 6.1) launching on the platform.

8.3 Any channel provider offered a vacated LCN under paragraph 8.2 will have two weeks in which to consider the offer and respond in writing to DMOL; beyond which time DMOL may offer the LCN to another channel provider.

8.4 If no public service channel or associated channel takes the vacated LCN under the process described in paragraphs 8.2 then it will remain vacant until such time as a new public service channel or associated channel launches on the DTT platform (in accordance with paragraph 8.2); or DMOL undertakes a shuffle-up procedure (see 8.6); or DMOL for any other reason deems it reasonable to use the LCN.

8.5 Channels already on the platform may not request vacant LCNs from DMOL; DMOL will always offer vacant LCNs to channels as described above.

8.6 A channel provider may elect not to move a channel into a vacated LCN offered to it in accordance with this section of the Policy.

- 8.7 Without prejudice to paragraph 8.6, if large gaps or large numbers of gaps open up between LCNs within a genre DMOL may undertake a shuffle-up procedure under this paragraph of the Policy to close some or all of the vacant LCNs within that genre. To operate this procedure DMOL will write to all channels providers with channels occupying higher LCNs than the vacated LCN(s) explaining that it intends to undertake a shuffle-up procedure and explaining which vacated LCNs are available or might become available under this process. From this date DMOL will close these vacated LCNs to new channels launching on the platform that might otherwise have had a claim to those LCNs under sections 5 or 6 of this Policy. Channel providers will be given two weeks to express interest in some or all of the LCNs that are available, and should prioritise their preferences. No channel will be under an obligation to move under the terms of this shuffle-up procedure. DMOL will generally take two weeks to consider the responses. DMOL will take into account any outstanding claims to vacated LCNs under either section 5 (which will always take priority) or section 6 of this Policy, and will then assign a vacated LCN to the channel with the next highest LCN.

## 9 CONSULTATION

- 9.1 DMOL will consult with channel providers on any proposed LCN moves.
- 9.2 Where there are fewer than five channels to be moved, DMOL will generally conduct a 'light' consultation process. A notification of the consultation will be sent to all channel providers, and responses invited from the channels proposed to be moved and any other channels which DMOL believes will be significantly affected by the proposed changes. A notification will also be placed on the DMOL website. A consultation period of approximately four weeks will be used, following which DMOL will consider responses, communicate its conclusion to the channel providers and publish a notice on the DMOL website at least eight weeks prior to the date of any move(s).
- 9.3 Where there are more than five channels to be moved, DMOL will generally conduct a full consultation process with all channel providers. Responses will be invited from all channel providers and stakeholders and a notification will be placed on the DMOL website. A consultation period of approximately eight weeks will be used, following which DMOL will consider responses, communicate its conclusion to channel providers and publish a notice on the DMOL website at least eight weeks prior to the date of any move(s).
- 9.4 DMOL reserves its right to conduct an expedited consultation process where there are deemed to be, or might be, consumer protection issues
- 9.5 Where DMOL reviews the Policy and believes there is a need to make substantive amends to the Policy DMOL will conduct a consultation process with channel providers and stakeholders following that described in paragraph 9.3 of this Policy.

## 10 APPEALS PROCESS

- 10.1 The appeals process is available should a channel provider wish to appeal the DMOL LCN Group's decision on either:
- (i) The genre or LCN allocation for a new channel launching on the DTT platform for the first time;
  - (ii) A move to a different genre or different LCN within a genre for an existing channel;
  - (iii) The addition, removal, merging or moving of genres; or
  - (iv) The decision or failure to allocate a vacated LCN.

Any appeal to DMOL is without prejudice to recourse to Ofcom or other relevant authorities.

- 10.2 Where the appeal relates to a new channel, the channel may launch at the LCN allocated without prejudice to the ensuing appeals process.

- 10.3 To initiate the appeals process for a new channel the channel provider should write to the Chair of DMOL within four weeks of the LCN allocation explaining why in the channel provider's view either the genre or the LCN assigned does not meet the Policy. The letter should further explain which genre or LCN the channel provider thinks the channel should be eligible for, and why. The Chair of DMOL may take up to four weeks to consider the appeal, and will then respond in writing to the channel provider. Within the four week period the Chair of DMOL may ask the channel provider for further information to assist with the review. If the DMOL Chair agrees that the channel provider has presented a sufficiently compelling case, and agrees to the channel provider's counter proposed genre or LCN, DMOL will move the channel into the relevant LCN or genre as soon as it is able to do so, and at the earliest date which is convenient to the channel provider. If the DMOL Chair does not agree that the channel provider has presented a sufficiently compelling case, the DMOL LCN Group's decision will stand.
- 10.4 Changes to the LCNs of existing channels would be subject to the consultation process set out in section 9 of this Policy. If, following consultation and notification from the DMOL LCN Group of its conclusion, the channel provider wishes to appeal that decision the channel provider should write to the Chair of DMOL within four weeks. The letter should explain why in the channel provider's view either the genre or the LCN assigned does not meet the Policy. Receipt by DMOL of an appeal will place the move on hold until the end of the appeals process. The Chair of DMOL may take up to four weeks to consider the appeal, and at the end of the four week period, will respond in writing to the channel provider. Within the four week period the Chair of DMOL may ask the channel provider who lodged the appeal for further information to assist with the review. If the DMOL Chair agrees that the channel provider has presented a sufficiently compelling case and that the channel should not move, no further action will be taken. If the DMOL Chair upholds the move originally proposed, then DMOL will move the channel into the relevant LCN or genre at a date to be agreed with the channel provider and generally no more than 8 weeks from the date of the DMOL Chair's decision. . If the DMOL Chair does not agree that the channel provider has presented a sufficiently compelling case, the DMOL LCN Group's decision will stand.

## 11 CHARGES

- 11.1 DMOL reserves the right to levy fair and reasonable charges in respect of the allocation and use of any LCNs and to suspend or withdraw the allocation or use of LCNs if any such charges are not properly paid in accordance with DMOL's payment terms.

## 12 INFORMATION PROVISION AND MONITORING

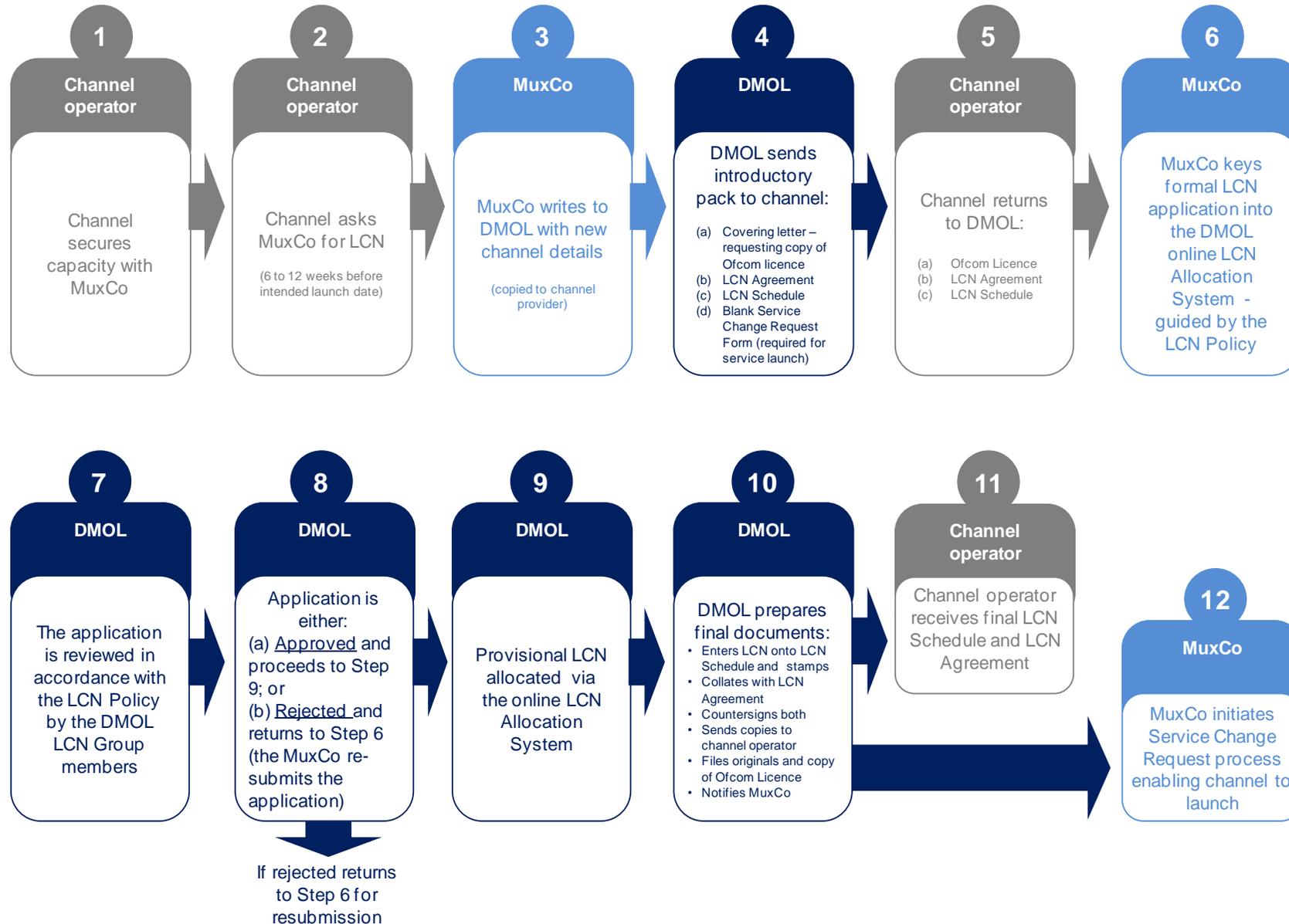
- 12.1 DMOL is not obliged to monitor the content of the channels which are on the DTT platform in order to ensure that they continue to comply with any representations made to DMOL by the channel provider about the channel or to investigate allegations brought by channel providers about such ongoing compliance. However, DMOL reserves the right at its discretion to monitor the content of channels and to investigate allegations brought by other channel providers.
- 12.2 Channel providers shall at their cost provide all such information as DMOL requests in order to enable it:
- (i) To conduct any monitoring or investigations which DMOL at its discretion wishes to conduct; and/or
  - (ii) To provide viewers with scheduling information.

Channel providers must take steps to ensure that all information provided by them or on their behalf is accurate, complete and up-to-date.

## 13 REVIEWS

- 13.1 DMOL will carry out periodic reviews of the Policy which are likely to be every three to four years, or earlier at the discretion of DMOL.

## SCHEDULE 1: The LCN Allocation Process



## SCHEDULE 2: DMOL's Genre Ranges

Genre	First LCN	Last LCN
General Entertainment	1*	99*
Navigation page	100	-
HD	101	120
Children's	121	130
News	131	150
Adult	171**	198**
Text and MHEG services	200	224
	225	299
Interactive services	300	320
IP delivered services	400	499
Radio	700	750

\* LCNs 8 and 45 are reserved for Local services with PSB status.

\*\* LCNs 170 and 199 are reserved for the slates that bookend the Adult section.

### SCHEDULE 3: DMOL's Genre Definitions

<b>General Entertainment</b>	Programming of an entertainment nature that targets a wide viewing audience. The channel must contain a variety of entertainment programming and the channel must not be more appropriately listed in another existing genre.
<b>HD</b>	<p>A service is defined as HD where it meets the video parameters for high definition services as defined in Table 6 of Ofcom's Reference parameters for DTT transmissions in the UK, version 6.11 dated 19/11/2009 (as amended from time to time).</p> <p>DMOL will allow identical simulcast HD and SD services' LCN positions to be exchanged for viewers watching HD services.</p>
<b>Children's</b>	Programming aimed at children aged 15 or under. There should be no material unsuitable for children aged 15 or under on any channel assigned to this genre.
<b>News</b>	Programming consisting predominantly of news and/or current affairs.
<b>Adult</b>	<p>DMOL will determine, in its reasonable opinion, whether it is appropriate to locate a channel in the Adult genre. Adult channels are channels which contain content of an adult nature, such that it features the depiction or description of, or behaviour of, a sexual or sexually suggestive nature, especially if this is of a lascivious nature. This includes the exhibition or depiction of sexual organs or sexual activity of any kind.</p> <p>When considering if a channel should be listed in the Adult genre, DMOL will consider the amount and nature of programming which is of an adult nature that is broadcast on to that channel.</p> <p>For the avoidance of doubt, transactional sex chat channels (or 'Adult Chat' services) will be located in the Adult genre, rather than within any other transactional genre within the EPG.</p>
<b>Text and MHEG Services</b>	<p>A service will be included in the Text and MHEG services genre if a substantial element of the programming on the channel falls into either of the categories:</p> <ul style="list-style-type: none"> <li>• The presentation of on-screen text services which are predominantly used by viewers to seek out specific information, or</li> <li>• Programming which is accessed by the viewer via an MHEG application, but which may be delivered to the viewer via IP.</li> </ul>
<b>Interactive Services</b>	<p>A service will be included in the Interactive genre if a substantial element of the programming of the channel falls into either of the categories:</p> <ul style="list-style-type: none"> <li>• Programming that can be accessed by the viewer as and when they demand, including push VOD services; or</li> <li>• Programming that enables the viewer to interact with the content or service in some way by utilising a button function on their TV remote control.</li> </ul>
<b>Radio</b>	Audio-only programming that is licensed as a radio station rather than as a television channel. If a channel comprises video programming or on-screen stills (other than via any interactive application which may be launched from the channel) the channel will not be assigned to the Radio genre.

#### **SCHEDULE 4: Guidance on paragraph 7.6**

When considering (iii) of paragraph 7.6 of the Policy, whether the swap of LCNs would be deemed to result in channels being listed in an order more likely to reflect viewers' expectations, DMOL would generally expect to take the following non-exhaustive list of factors into account:

- (i) Any sequencing implied by the name or branding of the channels; and/or
- (ii) The ordering of the two channels on other UK TV platforms; and/or
- (iii) Any other information that may support the channel provider's case.

When considering the timing of the swap of LCNs, DMOL is mindful of the fact that some viewers need to re-tune their Freeview equipment for LCN changes and therefore sees a potentially negative viewer impact arising from frequent or un-coordinated LCN changes and so:

- (i) A channel provider may only undertake one swap of any LCNs of any associated channels within its portfolio in any given year; and
- (ii) A channel provider may only swap LCNs at a time agreed with DMOL; and
- (iii) DMOL prefers that LCN changes are co-ordinated on the platform, and will seek to aggregate LCN changes on a date in calendar quarter 3 (July to September) of any given year.