



# **FAIR TRADING GUIDELINES**

<http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/fairtrading.html>

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## Preface

In recognition of the BBC's special position as a publicly funded organisation, the BBC's Royal Charter (the "Charter") and Agreement with the Department of Culture, Media & Sport (the "Agreement") place specific obligations on the BBC Trust (the "Trust") and BBC Executive Board in respect of Fair Trading.

The BBC's primary purpose is the promotion of its Public Purposes as set out in the Charter. It achieves this primarily through the provision of radio, television and online services that inform, educate and entertain. The BBC also conducts other activities that directly or indirectly promote its Public Purposes, including the provision of Commercial Activities.

The BBC recognises that its activities may have an impact on competition in the markets in which it operates. As a publicly funded organisation it has a special responsibility to ensure that whenever it engages in Trading Activities, whether public service or otherwise, it does so in a way that reflects its commitment to Fair Trading and does not compromise achievement of its Public Purposes.

The Trust is required to have regard to the competitive impact of the BBC's activities on the wider market. It seeks to do this through its Fair Trading Policies & Framework.

The term "Fair Trading" may mean different things to different stakeholders. However, the Trust defines it as encompassing the following requirements which have been imposed on the BBC:

- Competition Laws – the BBC recognises that it is subject to UK and EU Competition Law. Further details are set out in Annex 2. The compliance required by Competition Law represents the very minimum standard with which the BBC must comply.
- Charter and Agreement – these set out specific obligations on the BBC in relation to the fulfilment of its Public Purposes. These obligations apply to all the BBC's Trading Activities, both public service and commercial, covering, amongst other things, the use of the BBC brand and a prohibition on the use of public funds to fund the BBC's Commercial Activities.
- Fair Trading Policies – this sets out, inter-alia, how the Trust will ensure the BBC takes account of its competitive impact on the wider market

The Trust monitors the BBC's compliance with its various policies through the relevant Trust sub-committees.

The BBC Executive Board has responsibility for ensuring compliance with the BBC's Fair Trading obligations, it is held accountable for compliance by the Trust.

The Trust is informed by an annual independent Fair Trading audit undertaken by external auditors. The BBC's fair trading compliance systems are also subject to biannual independent assessment to maintain its ISO 9001:2008 accreditation, an internationally recognised standard for management systems.

These Fair Trading Guidelines (the "Guidelines"), which have been approved by the BBC Executive and the Trust, set out how the BBC will comply with the Trust's Fair Trading Policies and Framework, Competition Law and state aid requirements. The Guidelines are an integral part of the BBC's Fair Trading regime; they complement and support the extensive systems and controls that the BBC has put in place to ensure compliance with the Trust's policies (see Annex I for further details).

Compliance with Fair Trading obligations is of utmost importance; it is mandatory and is the responsibility of every member of BBC staff. If there is any doubt as to how the BBC's Fair Trading obligations may have an impact on activities with which you are involved, you must seek expert advice from the BBC's Fair Trading department.

# User Guide

The Guidelines are structured to cover the key areas of Fair Trading:

- Chapter 1 (“Competitive Impact Principle”) describes how the Competitive Impact Principle and the Competitive Impact Code are applied to the BBC’s Public Service Activities.
- Chapter 2 (“The 4 Commercial Criteria”) details the specific criteria that the BBC’s Commercial Activities must comply with.
- Chapter 3 (“Separation”) describes how the BBC achieves an appropriate degree of separation between its Public Service Activities and its Commercial Activities.
- Chapter 4 (“Use of BBC brands”) describes what constitutes a BBC brand, how BBC brands should be used and the categories of organisation which, through association with BBC brands, might undermine the BBC’s editorial integrity.

In addition, there are four Annexes to these Guidelines: Compliance & Reporting (Annex 1), Guidance on UK/EU Competition Law (Annex 2), Guidance for the Trailing of BBC Programme-Related Materials (Annex 3) and the BBC World Service Trading Protocols (Annex 4).

## Key terms used in the Guidelines

The Fair Trading Guidelines deploy various terms to describe the activities undertaken by the BBC. A simple guide to a few of the most frequently used terms is summarised below; a more comprehensive glossary of terms is contained at the end of the Guidelines.

**Public Service Groups** – the BBC’s licence fee funded Groups (e.g. BBC Vision, Audio & Music) and its Grant-in-Aid funded Group (i.e. BBC World Service).

**Public Service Activities** – the activities undertaken by the BBC’s licence fee funded Groups and Grant-in-Aid funded Group (e.g. production of radio programmes by BBC World Service, provision of content on [bbc.co.uk](http://bbc.co.uk)).

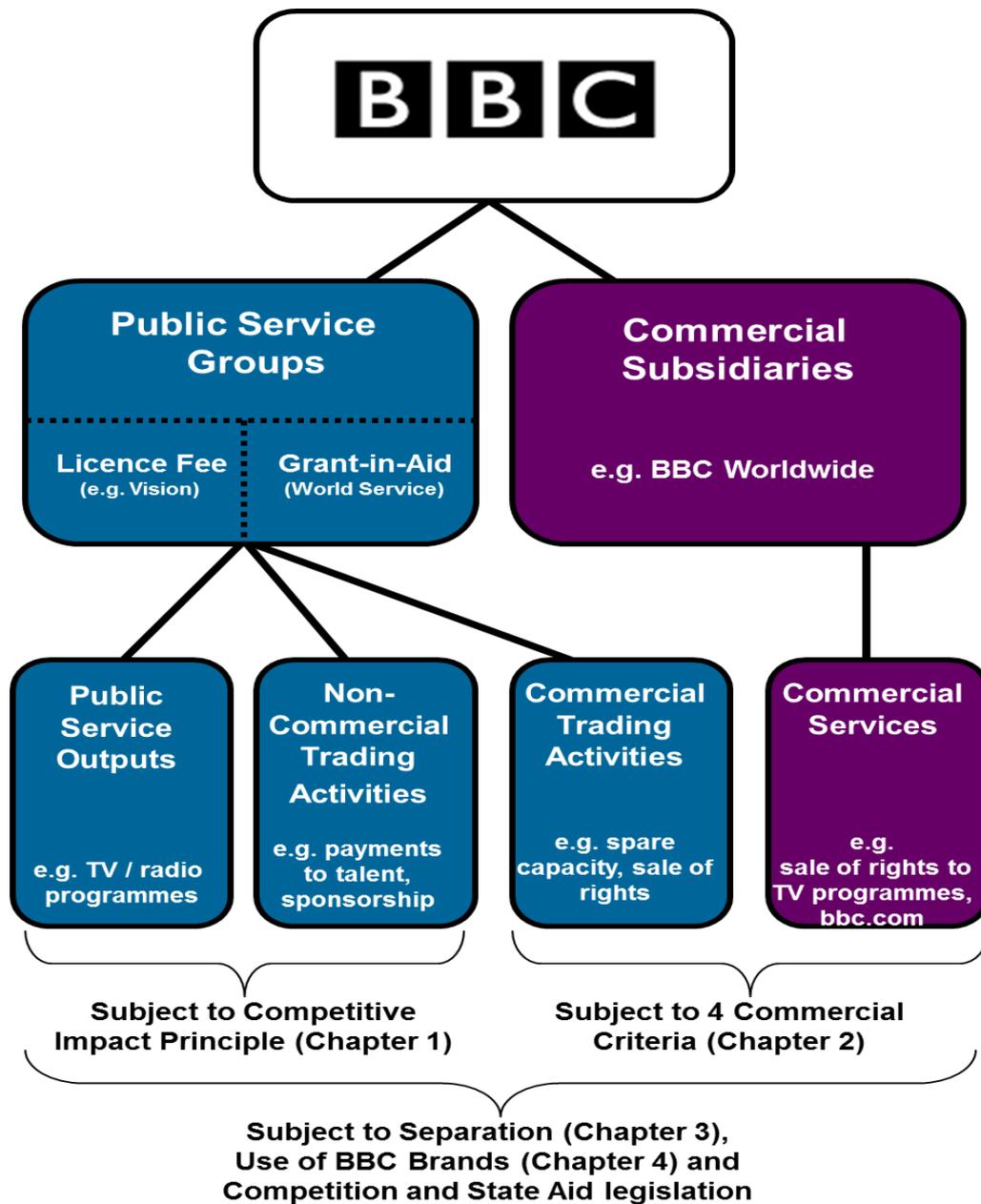
**Non-Commercial Trading Activities** – trading activities undertaken by the BBC’s Public Service Groups which are not carried out with a view to generating a profit (e.g. purchase of goods and services, contributions by sponsors towards the costs of staging events).

**Commercial Services** – the activities undertaken by the BBC’s Commercial Subsidiaries (e.g. the exploitation of rights by BBC Worldwide).

Commercial Trading Activities – the commercial activities undertaken by the BBC’s Public Service Groups (e.g. the sale of secondary rights in TV programmes by BBC Vision).

Commercial Activities – a collective term for Commercial Services and Commercial Trading Activities.

The diagram below depicts how Chapters 1–4 apply to the key activities defined above.



# Chapter I: Competitive Impact Principle

1.1 This Chapter describes how the BBC implements the Competitive Impact Principle for its Public Service Activities. It is structured as follows:

- **Section I** provides context and explains what is covered by the Competitive Impact Principle.
- **Section II** describes how the Competitive Impact Principle is applied in practice.
- **Section III** explains when advice should be sought from the Fair Trading department.
- **Section IV** provides practical guidance on implementing the Competitive Impact Code(s).

## Section I Context

1.2 The BBC's Public Service Activities may have impacts on competition in the markets in which they operate. These impacts can be both positive and negative.

1.3 The Charter requires the Trust to have regard to the competitive impact of the BBC's activities on the wider market. To fulfil this duty, the Trust has published a Competitive Impact framework covering the competitive impact of the BBC's activities on the wider market. The requirements under Competition Law represent the very minimum standard with which the BBC must comply. The Trust's framework goes beyond the requirements of UK and EU Competition Law (see Annex 2).

1.4 The Trust's framework outlines two key mechanisms for assessing the competitive impact of the BBC's Public Service Activities: the Public Value Test ("PVT") and the Competitive Impact Principle ("CIP" – see Box 1 and below).

1.5 Proposals for new or significant changes to the BBC's Public Service Activities are subject to a PVT. PVTs involve an extensive approvals process in order to balance the public value generated by an activity with its potential impact on the market.

1.6 PVTs have been undertaken prior to the launch of services such as the BBC's on-demand services and the BBC HD channel.

1.7 All of the BBC's Public Service Activities must comply with the CIP on an ongoing basis – including those approved originally via a PVT.

### **Box 1: The Trust's Competitive Impact Principle**

The Trust requires the BBC Executive, to endeavour to minimise its negative competitive impacts on the wider market whilst always ensuring it fulfils its Public Purposes and takes into account its other obligations in the Charter and the Agreement. This requirement is known as the "Competitive Impact Principle".

1.8 The CIP applies to all of the BBC's Public Service Activities (including its 'Non-Commercial Trading Activities' – see paragraphs 2.15 to 2.18) both in the UK and abroad. Examples of Public Service Activities include the purchasing of goods and services, engaging in partnerships with third parties and syndicating BBC content. In relation to broadcast or online published content, adherence to the BBC's Editorial Guidelines will also ensure compliance with the Fair Trading framework.

1.9 For the avoidance of doubt, the CIP is also applicable to the Public Service Activities undertaken abroad by the BBC World Service.

1.10 The CIP does not apply to the BBC's Commercial Activities, including those undertaken by the BBC's Public Service Groups (e.g. sales of spare capacity, sales of programme rights etc.). The BBC's Commercial Activities are subject to the 4 Commercial Criteria (see Chapter 2).

## **Section II How does the CIP work in practice?**

1.11 The CIP requires that the BBC must endeavour to minimise its negative competitive impacts on the wider market when carrying out Public Service Activities, whilst always ensuring the fulfilment of its Public Purposes and taking into account its other regulatory obligations (such as ensuring value for money).

1.12 The CIP does not necessarily require that the BBC should eradicate all potential negative impacts of its Public Service Activities (see paragraphs 1.24 to 1.28 for further details).

1.13 The BBC adopts a proportionate approach to the CIP assessment taking into account the size and scale of the activity concerned and its size relative to the size and scale of the industry that is likely to be affected by the activity. Where the BBC's market share relative to others in different parts of the world is low, the BBC's approach to CIP assessments for Public Service Activities outside the UK should take this into account. As a result the level of analysis and supporting evidence that is required for CIPs will vary depending on the context. Written records should be retained, where appropriate, in order to demonstrate how the CIP has been applied.

1.14 In practice, the CIP involves the following '3-step' test, which is described in more detail below:

- **Step 1:** Consider how the activity fulfils the BBC's Public Purposes.
- **Step 2:** Consider the impact on competition in the markets in which the activity operates.

- **Step 3:** Consider whether any negative impact on competition can be minimised by redesigning the activity without significantly compromising the Public Purposes or any of the BBC's other regulatory obligations.

### **Step 1: Assessment of Fulfilment of Public Purposes**

1.15 The assessment as to whether the activity fulfils the Public Purposes should normally consider factors such as:

- Does the activity sustain citizenship and civil society, for example by providing independent journalism of the highest quality?
- Does the activity promote education and learning?
- Does the activity stimulate creativity and cultural excellence, for example by nurturing and supporting UK talent?
- Does the activity enable the BBC to represent the nations, regions and communities of the UK?
- Does the activity bring the UK to the world and the world to the UK, for example by enhancing UK audiences' awareness and understanding of international issues?
- Does the activity deliver to the public the benefit of emerging technologies and enable the BBC to take a leading role in the switchover to digital?

### **Step 2: Assessment of potential market impact**

1.16 Broadly, the key objective of the CIP is to protect the interests of consumers, which is generally considered to coincide with the aim of protecting competition in the market.

1.17 The CIP is not intended to protect the commercial interests of every company that believes they are undermined by the BBC's presence.

1.18 A 'competitive impact' can be defined as a change to market conditions which is attributable to the BBC's actions.

1.19 Such impacts can be positive, for example when the BBC's activity stimulates investment or innovation by the private sector or alternatively stimulates demand by consumers and thereby grows the market.

1.20 However, the BBC's actions could also have a negative impact on competition if they hamper the ability or incentives of firms to innovate and invest. For example, if a new BBC activity takes demand away from the private sector, a company may no longer find it viable to stay in the market or invest/innovate to its planned levels.

### **What factors need to be taken into account?**

1.21 The application of the CIP should normally take into account (either implicitly or explicitly) the following (although other factors may also be relevant):

- the demand for the BBC's activity in comparison with competing providers;
- the key features of the affected markets e.g. market structure, barriers to entry, impact of technological change;
- how similar the BBC's activity is to commercial offerings; and
- how the BBC's actions may change the behaviour of other providers in the market.

1.22 The assessment of potential impact will involve both a short term dimension, e.g. how the BBC's actions might affect the ability of third parties to compete for present customers, and a long term dimension, e.g. how the BBC's actions might affect the development of new services or the level of future investment.

### **What types of action may cause concern?**

1.23 Given the range of activities to which the CIP applies, it is not possible to categorise all types of potential negative impacts that could arise. However, Table I summarises some potential sources of harm that could arise.

Table 1: Illustrative examples of potential sources of harm

Potential source of harm	Examples where concerns may arise	Examples where concerns may not arise
If the BBC, without objective justification, undertakes a new (free) activity which is broadly the same as those offered on a commercial basis by existing market providers, or ones that have been publicly announced as being under development.	If the BBC publishes an extensive, 'what's on' local listings site on bbc.co.uk which is broadly the same as those offered on a commercial basis elsewhere.	If the BBC publishes a new, basic guide to the UK's tax and benefits regime on bbc.co.uk which may be widely available on a non-commercial basis elsewhere.
If the BBC, without objective justification, deals on an exclusive basis with one particular third party.	If the BBC allows one organisation to host the BBC's on-demand services but refuses to deal with any other organisation.	If exclusivity is necessary for the success of the activity, for example due to technical reasons or because of the prohibitive cost of dealing with multiple partners.
If the BBC, without objective justification, treats third parties differently in otherwise comparable situations.	If the BBC applies significantly different conditions to the trailing of commercial products produced by BBC Worldwide as compared to those produced by third parties.	If the BBC pays programme suppliers different prices to reflect differences in the quality of programming on offer.
If the BBC, without objective justification, refuses to deal with a third party or refuses to grant them access to a particular service.	If the BBC refuses to grant access to online content to a content aggregator, without objective justification.	If the BBC refuses to deal with potential suppliers who are pricing their goods or services above what the BBC believes to be a fair market rate or imposing unreasonable trading terms.
If the BBC, without objective justification, insists on contract terms with third parties that go beyond normal market practice.	If the BBC included an exclusivity clause in a contract which prevents a platform operator from hosting the on-demand services of other media companies.	If the BBC negotiates discounts with suppliers which are in line with market practice, reflecting the scale and scope of its purchasing requirements.
If the BBC, without objective justification, knowingly overpays for programme inputs.	If the BBC knowingly pays well above the market rate for the rights to broadcast a major, live event.	If the BBC values the rights to broadcast a major, live event higher than its competitors, and pays what it believes is the minimum necessary to secure the rights.

### Step 3: Endeavouring to minimise negative competitive impacts

1.24 If the activity has the potential to generate a negative competitive impact, the final step is to consider how those adverse effects could be minimised without significantly compromising the Public Purposes or any of the BBC's other regulatory obligations such as ensuring value for money.

I.25 The actions that will be required to minimise impact will be case-specific. They will depend on, amongst other things, the nature and potential severity of the negative effects.

I.26 In some cases if a negative competitive impact is too great, the activity may be withdrawn.

I.27 Examples of useful questions to ask and actions that may need to be taken in order to minimise potential negative impacts are illustrated in Table 2 below.

Table 2: Illustrative examples of minimising potential negative impacts

Potential concern	Useful questions to ask	Possible action to minimise negative impacts
If the BBC, without objective justification, introduces a new, free offering which is substantially the same to those offered on a commercial basis by existing market providers.	How does the activity fulfil the BBC's Public Purposes?  What evidence is available to support the approach adopted?	Restrict the scope and/or scale of the activity e.g. set a defined time limit.  Discontinue activity.
If the BBC, without objective justification, deals on an exclusive basis with one particular third party.	Why is exclusivity necessary for the success of the activity?  What is the shortest period of exclusivity for the benefits to arise?  What evidence is available to support the approach adopted?	Remove exclusivity provision if activity could succeed in absence of exclusivity.  Shorten exclusivity period to the minimum level possible.
If the BBC, without objective justification, treats third parties differently in otherwise comparable situations.	Why are there differences in what is being provided to different customers/suppliers?  What evidence is available to support the approach adopted?	If treatment is not objectively justified, change approach.  Explain to the potential customer/supplier the reasons for their treatment (e.g. differences in value for money).  Review treatment on a periodic basis.
If the BBC, without objective justification, refuses to deal with a third party or refuses to grant them access to a particular service.	Are the reasons for non-supply objectively justified?  Is the same policy being applied to all similar, potential customers?  What evidence is available to support the approach adopted?	If non-supply is not objectively justified, deal with customer.  Explain to the potential customer the reasons for non-supply (e.g. low reach).  Explain to the potential customer what changes they would need to make prior to being granted access.  Review treatment on a periodic basis.

## Section III When do I need to seek advice from Fair Trading?

I.28 Staff should consider the requirements of the CIP when undertaking Public Service Activities. Advice should be sought (in advance) and with reasonable notice from the Fair Trading department if any of the following criteria are met:

- There is a potential significant risk that the BBC's actions could raise concerns such as those summarised in Table I above.
- The proposed activity is expected to be significant in scale (e.g. in terms of take-up, expenditure, size compared to others etc.).
- There is a potential significant risk that the BBC's actions could harm third party businesses or the interests of consumers.

## Section IV Implementing the Competitive Impact Code(s)

I.29 The Trust may publish codes dealing with those aspects of the BBC's Public Service Activities that, in its view, could raise significant competitive impact issues.

I.30 To date, the Trust has adopted one Competitive Impact Code: Code on Cross Promotion (the "Code"). This section provides practical guidance on applying the Code.

I.31 The Code identifies three particular types of promotion through the BBC's Public Service Activities which could give rise to potential concerns:

- the promotion by the BBC through its Public Service Activities of BBC Programme-Related Materials such as books, DVDs or downloads which have been commissioned, licensed or developed directly in conjunction with a BBC UK Public Service or programme or are relevant to the Public Purposes;
- the promotion by the BBC through its UK Public Services and related Public Service Activities of its other Commercial Services; and
- the promotion by the BBC through its UK Public Services and related Public Services Activities of particular digital platforms/services.

### **Promotion of BBC Programme-Related Materials**

I.32 The term BBC Programme-Related Materials refers to goods and services (e.g. books, DVDs or downloads) which have been commissioned, licensed or developed directly in conjunction with a BBC (Public Service) programme or are relevant to the Public Purposes.

I.33 The following information covers the trailing of BBC Programme-Related Materials on the BBC's TV channels, radio stations and online (bbc.co.uk).

## Television and radio

1.34 Detailed guidance on the trailing of BBC Programme-Related Materials on the BBC's TV and radio channels is contained in Annex 3.

1.35 The guidance applies equally to materials produced by BBC Worldwide and by third parties.

1.36 The BBC has a team (Media Planning) which is primarily responsible for implementing the guidance in relation to trails on the BBC's TV channels.

**1.37 Trails on the BBC's radio stations are dealt with directly by the Station Controller, and must also be referred in advance to Editorial Policy.**

## Online

1.38 The BBC has a specific role (through one of its Public Purposes, see 2.19) to deliver to the public the benefits of emerging communications technologies and services.

1.39 In fulfilling this role the BBC may wish to offer editorial links from its website (bbc.co.uk) to external websites. For example, the link may provide an additional source of information, source material or informed comment in relation to a news item. Further guidance in this area should be sought from Editorial Policy.

1.40 In addition, the BBC may 'trail' BBC Programme-Related Materials by linking to websites which offer purchase of these materials (sometimes referred to as "buy it now" links).

1.41 In doing so:

- All such links from bbc.co.uk must be editorially justified.
- The BBC should link on a non-discriminatory basis to a range of external websites which offer online purchase of the BBC Programme-Related Materials.

1.42 Unfair discrimination could occur were the BBC to treat two similar websites differently (to the detriment of one) without an objective justification for doing so.

1.43 The BBC considers that links to external websites which offer online purchase of BBC Programme-Related Materials will be non-discriminatory so long as:

- Clear and objective criteria for the selection of relevant external websites are applied.
- The websites operated by the BBC's Commercial Subsidiaries are subject to the same objective criteria.

- The criteria for selection of external websites must not go beyond what is necessary for the BBC to achieve its Public Purposes (see 2.19).

1.44 In some instances there may only be one website which offers BBC Programme-Related Materials.

1.45 It must be clear to the user, prior to leaving bbc.co.uk in order to journey to an external website offering BBC Programme-Related Material that the user is now navigating to an external site which is not part of the BBC's Public Service Activities.

### **Cross promotion of the BBC's Other Commercial Services**

1.46 The BBC will not publicise the BBC's Commercial Services (other than BBC Programme-Related Materials) through its Public Service Activities unless there is a clear editorial justification for doing so. Editorially justified references will, by definition, not be considered promotional.

1.47 There follows below a non-exhaustive list of illustrative examples of editorially justified references. Further advice on these and other examples is available from Editorial Policy:

- If a major news story arises as a consequence of the BBC's Commercial Services then the BBC's Public Service Groups may be justified in mentioning the BBC's Commercial Services when reporting the story.
- If an employee from the BBC's Commercial Subsidiaries was being interviewed because of their expertise in a particular field then a mention of that service may be justified.
- If the BBC's Commercial Services were included for legitimate editorial reasons in a review programme then it may be acceptable to mention details of the BBC's Commercial Services.

### **Promotion of Linear Digital TV**

1.48 The BBC has a specific Public Purpose to help deliver to the public the benefit of emerging communications technologies and services. In addition it also has a leading role in the national switchover to digital TV.

1.49 The BBC recognises that it has the potential to influence significantly the uptake and usage of digital TV platforms and services.

1.50 The BBC's actions could potentially have an adverse impact on the market if it were to favour one platform or service over another when promoting digital TV through its Public Service Activities.

1.51 Therefore, it is necessary that:

- Promotions for digital TV that refer to a specific digital platform, such as digital terrestrial television ("DTT") must also name all other **major**

digital TV platforms (for example, satellite, cable and online) on which the BBC's (relevant) digital TV channels are available.

- Promotions for digital TV that refer to a specific digital TV service, such as Freeview, must also name all other **major** digital TV services (for example Sky, Virgin) on which the BBC's (relevant) digital TV channels are available.
- Promotions for digital TV must treat digital TV services and/or digital platforms equally in respect of all aspects mentioned, such as pricing, brand names, availability and packages.

I.52 A **major** digital TV platform or service is one which attracts a customer base of over 500,000 users.

I.53 Whilst the materiality threshold may not be met for any particular digital TV service available via the broadband platform, 'broadband TV' or 'IPTV' must be considered a 'major' digital TV platform.

I.54 The BBC also applies the spirit of the Code to digital TV platforms/services with fewer than 500,000 users. For example, promotions that refer to a specific digital TV service with fewer than 500,000 users, must also name all other digital TV services with fewer than 500,000 users, on which the BBC's (relevant) digital TV channels are available.

I.55 Table 3 below provides illustrative examples of messages that are likely to be considered consistent with the Code and those that are not likely to be. For simplicity it assumes that the BBC's digital TV channels are available on the following (five) digital TV services in the UK plus via broadband TV:

- Red: a satellite platform with more than 500k users
- Blue: a DTT platform with more than 500k users
- Yellow: a cable platform with more than 500k users
- Green: a satellite platform with fewer than 500k users
- White: a cable platform with fewer than 500k users

Table 3: Illustrative examples of how to apply the Code to the promotion of digital TV platforms/services

Message not consistent with Code	Reason for inconsistency	Message consistent with Code
BBC's digital TV channels are available on satellite, cable and DTT	Does not mention availability of BBC's channels via broadband TV	BBC's digital TV channels are available on satellite, cable, DTT and via broadband TV
BBC's digital TV channels are available on Red and Blue	Only mentions availability of BBC's digital TV channels on 2 of the 3 service providers with more than 500k users	BBC's digital TV channels are available on Red, Blue and Yellow
BBC's digital TV channels are available on Red, Blue, Yellow and Green	By mentioning one service provider with fewer than 500k users, the message should refer to all providers with fewer than 500k users	BBC's digital TV channels are available on Red, Blue, Yellow, Green and White
BBC's digital TV channels are available on Red, Blue, and Yellow, and subscription-free on Green and White	Provides details of the retail offering (i.e. 'subscription free') for only 2 of the 5 named providers.	BBC's digital TV channels are available via subscription on Red, Blue, and Yellow, and subscription-free on Green and White

I.56 Given the greater capacity to promote platforms or services in the online environment, the BBC should provide details through [bbc.co.uk](http://bbc.co.uk) of all available digital TV platforms and services on which the BBC's (Public Service) TV channels are available.

#### I.57 Cross Promotion of on-demand TV-like content and services

The BBC considers that provision of BBC on-demand content and services helps promote the Public Purposes by offering another way for viewers to access its services. However, as with linear content, the BBC could have a potentially negative impact on the market if, for example, it favoured one digital TV platform or service that supports the BBC iPlayer or otherwise hosts BBC on-demand content over another.

As a result, promotions on linear BBC TV for BBC iPlayer and/or on-demand content that refer to [bbc.co.uk](http://bbc.co.uk) should also refer to the availability of the relevant content on other platforms and services.

The BBC must also provide on [bbc.co.uk](http://bbc.co.uk) a central list and details of the main digital TV platforms and services on which BBC iPlayer and/or BBC on-demand content is available.

## Chapter 2: The 4 Commercial Criteria

2.1 The BBC's activities can be divided into two broad categories: Public Service Activities and Commercial Activities. This Chapter focuses on the BBC's Commercial Activities.

2.2 The guidance below applies to the Commercial Activities undertaken by both the BBC's Commercial Subsidiaries (e.g. BBC Worldwide) and the BBC's Public Service Groups (including BBC World Service).

2.3 The BBC's Commercial Activities must comply with certain specified criteria, known as the "4 Commercial Criteria" or simply "the 4CC".

2.4 The 4CC require that any Commercial Activity undertaken by the BBC must:

- fit with the BBC's Public Purposes;
- not jeopardise the good reputation of the BBC or the value of the BBC Brand;
- exhibit commercial efficiency; and
- comply with the Trust's Fair Trading Policy, the BBC's Fair Trading Guidelines and, in particular, avoid distorting the market.

2.5 This Chapter describes what constitutes a Commercial Activity (Section I) and then explains how the BBC will interpret the 4CC and how it will monitor on-going compliance of its Commercial Activities with those criteria (Sections II, III, IV and V).

### Section I Overview of the BBC's Commercial Activities

2.6 The BBC's Commercial Activities take two forms:

- Commercial Services undertaken by the BBC's Commercial Subsidiaries.
- Commercial Trading Activities undertaken by the BBC's Public Service Groups.

2.7 Separate tests for assessing compliance against the 4CC are applied to Commercial Services and Commercial Trading Activities (2.19–2.35).

#### **Commercial Services**

2.8 Commercial Services are activities that are undertaken primarily with a view to generating a profit. They must be undertaken by separately constituted Commercial Subsidiaries and cannot be undertaken by the BBC's Public Service Groups. The vast majority of the BBC's Commercial Activities are classified as Commercial Services.

2.9 The BBC currently operates three main wholly owned Commercial Subsidiaries:

- BBC Worldwide – maximises the value of the intellectual property created by the BBC's Public Service Groups;
- BBC World News – the BBC's 24-hour international news channel; and
- BBC Studios & Post Production – provides studio and post production services to the BBC and third parties.

### **Commercial Trading Activities**

2.10 The BBC's Public Service Groups may undertake Commercial Trading Activities. Commercial Trading Activities are undertaken primarily to promote the BBC's Public Purposes but **may also generate a profit**. They are, in effect, a corollary of the BBC's Public Service Activities. Examples include:

- Licensing or otherwise disposing of rights in assets created originally by the BBC's Public Service Groups. For example, the licensing of the right to publish the DVD of a BBC-produced television programme.
- Sub-licensing or otherwise disposing of rights which were acquired as part of a larger package of rights. For example, the sale of certain broadcast rights to a sports event which were purchased initially in order to secure the rights to produce public service programming. The BBC should acquire unwanted rights in a property only where free-to-air rights are not available in isolation or where exclusivity is essential to deliver its Public Purposes (see 2.19).
- Up-front investment by third parties in BBC productions in exchange for rights. For example, the provision by a third party of co-production funds for a natural history series in exchange for secondary distribution rights.
- Trading or other activity between the BBC Public Service Groups and the BBC's Commercial Subsidiaries, or between different parts of the BBC's organisation. For example, the provision by the BBC's Public Service Groups of business support services to the BBC's Commercial Subsidiaries (e.g. finance systems, technology).
- The provision of facilities, services and goods which are ancillary to the BBC's Public Service Activities and in respect of which any charge is imposed primarily for the purpose of recovering costs/expenses. For example, the provision by the BBC's Public Service Groups of programme support material (e.g. booklets) or tickets for events.
- Selling of assets or spare capacity in the BBC's resources held for use by the BBC's Public Services (see below).

## **Spare capacity**

2.11 The sale of excess (spare) capacity by the BBC's Public Service Groups is permissible Commercial Trading Activity. An asset or facility (including personnel) has spare capacity when it is not possible to reorganise the BBC's Public Service Activities in order to eliminate that capacity.

2.12 Such sales by the BBC's Public Service Groups must be:

- subordinate to the first claim on all assets of the need to service the BBC's Public Service Activities. For significant transactions (as defined in the relevant Fair Trading procedures), written documentation must be kept, which confirms that the relevant public service output can still be delivered whilst using this spare capacity;
- accounted for separately, transparently and in sufficient detail (including the time of all staff involved) to show compliance with the above obligations; and
- priced fairly (see paragraphs 3.12 to 3.20).

2.13 Spare capacity should not be maintained or prolonged as a justification for operating a Commercial Trading Activity. All of the BBC's Public Service Groups are expected to adjust capacity to meet anticipated demand for Public Service Activities over a reasonable period of time. The period of time over which spare capacity may exist will vary depending on the nature of the asset or facility. For example, it may represent poor value for money to adjust capacity derived from large fixed assets (e.g. buildings, studios) in the short to medium term.

2.14 The BBC's Public Service Groups must not invest in new capacity or engage staff purely or largely for commercial trading. However, a limited amount of investment may be permissible to enable the spare capacity around a more substantial asset or resource to be exploited commercially. In such circumstances, in order to ensure no risk to public funds, the costs of any such investment must:

- be demonstrably covered by the dependable profits of other Commercial Trading Activities; and
- entail no continuing liability to the relevant Public Service Group, such as the risk of accumulated redundancy costs.

## **Non-Commercial Trading Activities**

2.15 The BBC's Public Service Groups can also undertake 'Non-Commercial Trading Activities'. These are defined as trading activities which are not carried out with a view to generating a profit and in the normal course of business will not make a profit.

2.16 Broad examples of Non-Commercial Trading Activities include:

- The BBC's procurement of goods and services (e.g. talent, production inputs) – which, by definition, involve the BBC spending money rather than receiving it.
- Sponsorship of Public Service events – the Agreement permits the BBC to recover only a share of the costs of mounting Public Service events from third party sponsors (hence there is no possibility of a sponsor ever paying the BBC more than the cost of mounting an event).

2.17 Non-Commercial Trading Activities are not subject to the 4 Commercial Criteria but must comply with the Competitive Impact Principle (see Chapter I of these Guidelines).

2.18 For detailed guidance on sponsorship of BBC Public Service events, please see paragraphs 4.53 to 4.57 of these Guidelines.

## Section II Fit with the BBC's public purpose activities

2.19 The BBC Public Purposes can be summarised as follows:

- Sustaining citizenship and civil society
- Promoting education and learning
- Stimulating creativity and cultural excellence
- Representing the UK, its nations, regions and communities
- Bringing the UK to the world and the world to the UK
- Delivering to the public the benefit of emerging communications technologies and services

2.20 A Commercial Activity is to be considered to fit with the BBC's Public Purposes if:

- it is appropriate to be carried on in association with the promotion of the Public Purposes; and
- it is connected, other than merely in financial terms, with the ways in which the BBC promotes its Public Purposes.

2.21 All of the BBC's Commercial Services must comply with the tests for appropriateness and connectivity.

2.22 The test of 'appropriateness' includes, for example, ensuring that the proposed activity would not bring the BBC into disrepute or undermine its brand values.

2.23 The test for ‘connectivity’ requires an assessment of the proposed activity against the Public Purposes outlined in paragraph 2.19. For example, where the proposed activity takes place outside the UK, the assessment is likely to include the “international” Public Purpose – bringing the UK to the World, and the World to the UK. Initiatives involving the use of new technologies or services are likely to require an assessment against the final criterion (amongst others).

2.24 The requirement for a Commercial Service to be ‘connected’ will be assessed in relation to the activities that the BBC undertakes to fulfil its Public Purposes. This need not be at the level of the individual licensed services (e.g. demonstrating that a proposed commercial service is connected with BBC Three) but must link clearly with the activity itself (e.g. promoting innovative British content and talent aimed primarily at younger audiences).

2.25 Commercial Trading Activities are undertaken by the BBC as ancillary activities to its main objective of delivering its Public Purposes and, by definition, such activities should be both ‘appropriate’ and ‘connected’ to the BBC’s Public Purposes.

### Section III Protecting the reputation of the BBC and the value of the BBC brand

2.26 The BBC’s Commercial Services and Commercial Trading Activities must not jeopardise the good reputation of the BBC or the value of the BBC brand. Commercial Activities should comply with the editorial principles set out in the BBC’s Editorial Guidelines and with any other relevant guidance issued by Editorial Policy or Marketing & Audiences (“M&A”).

2.27 For example, the BBC must not engage in commercial activities involving a third party that could potentially undermine the BBC’s editorial integrity. For further guidance on this requirement please refer to paragraphs 4.64 and 4.65 of these Guidelines.

### Section IV Exhibiting commercial efficiency

2.28 The BBC’s Commercial Services must exhibit commercial efficiency and will be assessed against a series of agreed financial targets.

#### **Commercial Subsidiaries**

2.29 The commercial efficiency of Commercial Services operated by BBC Worldwide will be assessed against the investment targets set out in its Investment Guidelines. These targets will be applied to each Commercial Service and will use a basket of ratios to reach a view on commercial efficiency.

2.30 Where the proposed activity takes place outside the UK, BBC Worldwide’s Investment Guidelines take into account the additional risks associated with such business, including currency exchange rate risks, local market conditions and the

risks associated with management and control of business interests in locations that are geographically remote from the UK.

2.31 The commercial efficiency of BBC World News and BBC Studios & Post Production will be assessed against the financial targets set in their respective business plans.

### **Public Service Groups**

2.32 Commercial Trading Activities exist as ancillary activities to the BBC's Public Service Activities. The prices charged for all goods/services supplied must comply with the requirements of Chapter 3 of these Guidelines. It is not necessary to undertake any further analysis to assess compliance with this criterion.

## **Section V Compliance with the Fair Trading Guidelines and the requirement that Commercial Activities must not distort the market**

2.33 A robust and rigorous Fair Trading regime is in place to ensure that all trading activities of the BBC comply with these Guidelines and all relevant Competition Laws (see Annex 2).

2.34 The BBC's Commercial Activities shall not be regarded as distorting the market where they are in compliance with these Guidelines and relevant Competition Laws, and have not been given an unfair commercial advantage which could unduly and negatively influence the market.

2.35 An unfair commercial advantage will be deemed *not* to have arisen if:

- A Commercial Service does not use Licence Fee funds or Grant-in Aid.
- A Commercial Trading Activity utilises Public Service Activity Inputs at fair transfer prices.

## Chapter 3: Separation

3.1 This Chapter provides guidance on how the BBC ensures separation between its three principal sources of funding: the Licence Fee, World Service Grant-in-Aid and commercial revenues.

3.2 An appropriate degree of 'Separation' is necessary to fulfil the following obligations:

- The BBC's Commercial Activities must not receive an unfair advantage from the BBC's Public Service Groups (Section I).
- No Public Funds must be used, or put at risk, by the BBC's Commercial Activities (Section II).
- There must be clear separation between Licence-Fee funds and World Service Grant-in-Aid (Section III).

### Section I The BBC's Commercial Activities must not receive an unfair advantage from the BBC's Public Service Groups

3.3 The following conditions ensure that the BBC's Commercial Activities do not receive an unfair advantage from the BBC's Public Service Groups:

- Financial and operational separation between the BBC's Public Service Activities and its Commercial Activities.
- Fair transfer pricing between the BBC's Public Service Groups and its Commercial Subsidiaries.

3.4 For the avoidance of doubt these principles apply also to the relationship between the BBC's Public Service Groups and third party (non-BBC) organisations.

#### **Financial and operational separation between the BBC's Public Service Activities and its Commercial Activities**

3.5 There must be transparent operational and accounting separation between the BBC's Public Service Activities and its Commercial Activities.

3.6 Clear boundaries should be drawn between the BBC's Public Service Activities and its Commercial Activities in order to ensure that there is clarity in their respective objectives, strategies and decision-making.

3.7 For the BBC's Commercial Services, it is necessary that:

- they operate on an appropriate arm's length basis from the BBC's Public Service Activities;
- they are carried out by individually constituted Commercial Subsidiaries, normally with limited liability and strict borrowing covenants;
- they maintain independently audited accounts and clearly defined management structures;
- transactions with the BBC's Public Service Groups must be conducted on the basis of formal (documented) agreements for all goods and services supplied. In line with intra-group practice, this may take the form of, for example, written contracts, service level agreements, email exchange or other documentary evidence;
- they must not receive any unfair benefit by virtue of their relationship with the BBC's Public Service Groups. An unfair benefit may arise, for example, if the BBC's Public Service Groups:
  - unfairly promoted the BBC's Commercial Activities (see for example I.46 to I.47);
  - provide the BBC's Commercial Subsidiaries with access to information (or resources) beyond what would be strictly necessary for the efficient commercial exploitation of a particular right or asset owned by the BBC's Public Service Groups;
  - acquire Pay-TV rights with the sole intention of making them available to one of the BBC's commercial television channels;
  - allow the BBC's Commercial Subsidiaries to offer as prizes, goods and services (e.g. tickets to watch a BBC programme) that would not be offered on a similar basis to third parties; and
  - permit the BBC's Commercial Subsidiaries to engage in activities that could suggest that consumers need to buy commercial products and services in order to access content produced by/for the BBC's Public Service Groups.

3.8 As noted in paragraph 2.9, BBC Worldwide is a wholly-owned commercial Subsidiary of the BBC with the primary objective of maximising the value in the intellectual property (content) created by the BBC's Public Service Groups.

3.9 The relationship between the BBC's Public Service Groups and BBC Worldwide is governed by an agreement which provides for BBC Worldwide to have the first option to invest in BBC programming. In practice this means BBC Worldwide has the right to acquire commercial exploitation rights (at market rates) prior to them being offered to third parties – the BBC may seek bids from third

parties if it is not satisfied with BBC Worldwide's offer. This arrangement is considered consistent with the requirements above.

3.10 For the BBC's Commercial Trading Activities, operational measures must be taken to simulate the disciplines of a Commercial Subsidiary. These will include:

- maintaining separate trading accounts – including records of information such as volumes, prices, revenues and costs; and
- binding agreements between the BBC and its trading partner(s).

3.11 In all cases, agreements should reflect the scale and significance of the goods and/or services to be delivered. The structures chosen should be designed to demonstrate that public funds are not being used to support Commercial Activities.

### **Fair transfer pricing between the BBC's Public Service Groups and its Commercial Subsidiaries**

3.12 The BBC's Public Service Groups may supply goods and services to the BBC's Commercial Subsidiaries and to third parties. Typically, these 'goods and services' can be broadly categorised as, but not limited to, the following:

- intellectual property rights ("IPR");
- facilities;
- people; and
- business support.

3.13 The BBC aims to maximise the value of licence fee payer's assets. The key principle of 'fair transfer pricing' is that charges for goods and services supplied by the BBC's Public Service Groups, whether sold to the BBC's Commercial Subsidiaries or to third parties, should be set in line with prevailing market practice.

3.14 In exceptional circumstances, and then only where it can be demonstrated that the approach conforms to prevailing market practice, it may be acceptable to set prices with reference to incremental costs (the term 'incremental costs' is akin to the costs that would be avoided if the particular good, service or increment of output was no longer supplied). This approach is conditional on prior approval by the Fair Trading department.

3.15 Under no circumstances should prices be set below the BBC's incremental costs of providing a good or service.

3.16 In the absence of any verifiable or comparable information/data on prevailing market practice, prices charged should seek to cover:

- all relevant direct costs involved in providing the good(s) or service(s); and

- an appropriate contribution to the relevant overheads and/or capital costs incurred by the business area; and
- an appropriate contribution for reinvestment in the BBC's Public Service Activities.

3.17 If the proposed price fails to satisfy the guidance outlined above, reference should be made in advance to the Fair Trading department. The Fair Trading department may require the prices to be revised if it concludes that there is no objective justification for the proposed approach.

3.18 A summary of key considerations for each of the four broad categories described in paragraph 3.12 is outlined in Tables 4-7 below. These tables may not cover all potential transactions or relevant issues; further guidance is available for these and any other transactions from the Fair Trading department.

Table 4: Intellectual property rights

Examples	Key considerations
Commercial rights to BBC programmes, licenses to use BBC-owned technology etc.	<ul style="list-style-type: none"> <li>- The market context for rights to BBC content should normally take into account, for example, the specific characteristics of the programming, the scope of the rights package(s) and current market trends.</li> <li>- The prices charged should also take into account the appropriate balance between upfront payments and future revenues e.g. through profit shares.</li> </ul>

Table 5: Facilities

Examples	Key considerations
Hiring out of studios in the nations and regions, letting of office space etc.	<ul style="list-style-type: none"> <li>- The market context for hiring BBC owned facilities should take into account, for example, the prices charged for similar facilities in the area.</li> <li>- Incremental costs could include, for example, additional cleaning costs from hiring out unused office space.</li> <li>- Other direct costs could include, for example, an allocation of standard FM charges for office space.</li> <li>- BBC overheads may include, for example, divisional management costs and central support services.</li> <li>- The contribution to the capital cost of an asset should normally take into account, for example, the planned level of commercial usage vis-à-vis the level of Public Service usage.</li> </ul>

Table 6: People

Examples	Key considerations
Hiring out of a BBC producer to an independent production company, editing of BBC content to enable commercial exploitation etc.	<ul style="list-style-type: none"> <li>- The market context should take into account, for example, the prices charged for similarly skilled individuals in the area.</li> <li>- Incremental costs could include, for example, the cost of any overtime payments to BBC staff as a result of undertaking the commercial activity.</li> <li>- Other direct costs could include the 'standard' wages of the BBC staff involved and the associated non-salary costs (e.g. NI and pension contributions by the BBC).</li> <li>- BBC overheads may include, for example, divisional management costs and central support services.</li> </ul>

Table 7: Business support

Examples	Key considerations
Provision of finance systems and technology services for a Commercial Subsidiary etc.	<ul style="list-style-type: none"> <li>- Prices charged for shared business support services (typically to Commercial Subsidiaries and BBC World Service) should be based on an appropriate allocation of the variable and fixed costs incurred by the BBC in providing the service(s).</li> <li>- The cost allocation methodology should be based on the most relevant cost driver (in line with commonly accepted accounting procedures). For example, for the provision of an expenses service the relevant cost driver could be historic data on the number of claims.</li> <li>- For standalone services (e.g. technology), wherever possible the precise, full cost of providing the service should be passed through.</li> </ul>

3.19 It is the responsibility of the seller to demonstrate that all charges made are compliant with these Guidelines. Failure to charge a fair price could raise the risk of challenge to the BBC under Competition Law and/or EU Law on State Aid (see Annex 2).

3.20 Guidance on the pricing requirements of UK/EU Competition Law for the supply of goods and services by the BBC's Commercial Subsidiaries is contained in Annex 2.

### **Benchmarking and the role of the Commercial Agency**

3.21 The pricing requirements outlined above place an emphasis on pricing in line with the market context.

3.22 When assessing the market context, evidence should be gathered wherever possible from publicly-available sources (e.g. published ratecards, internet-based research).

3.23 For the BBC's intellectual property rights (primarily content) the BBC's Commercial Agency department is responsible for concluding deals with commercial investors, distributors and publishers to ensure the BBC gets full value for its rights and is able to channel that income back into programme making. The Commercial Agency advises BBC production departments on potential sources of funding, and negotiates on their behalf.

3.24 The Commercial Agency monitors developments in, advises on and documents current market practice for the pricing of commercial exploitation rights. It discharges this obligation through, for example, its employment of industry experts, external monitoring and its regular dealings with third party distributors (i.e. live market testing).

3.25 Elsewhere, where appropriate, the Fair Trading department may undertake benchmarking studies in order to gather information on the prevailing market rate for key supply contracts between the BBC's Public Service Groups and its Commercial Subsidiaries. Typically these exercises are undertaken where supply contracts are substantial in value, raise matters of wider significance to the BBC or represent entry into new sectors for which precedent is not available. The Fair Trading department may also, from time to time, undertake spot testing of the prices charged between the BBC's Public Service Groups and its Commercial Subsidiaries.

3.26 Benchmarking exercises take a number of forms ranging from simple desk-based research by the Fair Trading department through to detailed independent analysis by a third party. The Controller, Fair Trading will advise on the appropriate form taking into account factors such as the scale, significance and potential risks associated with the particular supply contract.

## Section II No risk to, or use of, public funds

3.27 If properly implemented, the requirements outlined in Section I above will ensure that public funds are not diverted to the BBC's Commercial Activities.

3.28 In addition, the BBC's Commercial Activities must not give rise to any contingent liabilities to public funds. For example, agreements between the parties should (where relevant) make adequate provision for any closure and restructuring costs, without producing a charge on public funds, and avoid indemnities which would have to be paid from public funds.

## Section III Financial separation between Licence-Fee funds and BBC World Service Grant-in-Aid

3.29 BBC World Service is funded principally by a Parliamentary Grant-in-Aid, received from the Foreign and Commonwealth Office<sup>1</sup>.

3.30 The BBC's Licence Fee funded Groups may engage in trading activities with BBC World Service. For example, the BBC's Licence Fee funded Groups may provide BBC World Service with programming and accommodation.

3.31 There must be financial separation between BBC World Service and the rest of the BBC's Public Service Groups. This is necessary to ensure that the Licence Fee

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<sup>1</sup> Following the licence fee settlement agreed in 2010 the activities of BBC World Service will be funded by the BBC Public Service with effect from 2014

is not used to support or subsidise BBC World Service activities and that Grant-in-Aid is not used to support or subsidise Licence Fee funded activities.

3.32 Therefore:

- the prices charged by the BBC's Licence Fee funded Groups for the provision of goods and services to BBC World Service (and vice versa) should normally be "cost-based" i.e. in line with the first two bullets of paragraph 3.16.

Where the service being provided is an intangible asset (for example the 'rights' to a particular programme or piece of technology), due regard should be given to the opportunity costs incurred by the supplier (e.g. the revenue that could be generated if that right was sold to a third party).

- Trading between BBC World Service and the BBC's Licence Fee funded Groups must be transparent and established on the basis of formal agreements.

3.33 In recognition of the requirement for separation, a set of protocols have been drawn up to provide further guidance on the rules governing the trading relationship between BBC World Service and the BBC's Licence Fee funded Groups (see Annex 3). The protocols also highlight the trading relationship between BBC World Service and the BBC's Commercial Subsidiaries.

## Chapter 4: Use of BBC brands

4.1 This Chapter describes the Fair Trading obligations concerning the use of BBC brands.

4.2 It begins by explaining what is covered by the term “BBC brand” (Section I) and then sets out some key principles relating to the BBC’s use of its brands (Section II). It then explains how these principles are applied where:

- BBC brands are used by the BBC’s Commercial Subsidiaries or third parties for the specific purpose of carrying out the BBC’s Commercial Activities (Section III); and
- more generally, BBC brands are associated with third party brands (and, in certain circumstances with the brands used by the BBC’s Commercial Subsidiaries) (Section IV).

4.3 Finally, this Chapter provides guidance on the categories of organisation which, through association with BBC brands, might undermine the BBC’s editorial integrity or potentially bring it into disrepute (Section V).

### Section I The BBC brand and its core values

4.4 The BBC is a unique organisation: a content and service provider funded and owned by the British public, free from commercial and political interests. It exists to enrich people’s lives through high-quality and distinctive content for everyone – to inform, educate and entertain. This is the essence of the BBC brand.

4.5 Broadly the term ‘BBC brand’ refers to anything which could suggest that a good or service has a strong association with, or has originated from, the BBC. For example, it applies to:

- the BBC’s name, its initials and its logo;
- sub-brands such as the names, initials or logos of networks, channels, services, programmes (e.g. BBC RADIO 4, ‘Doctor Who’, ‘EastEnders’, ‘Match of the Day’) and even programme characters and locations (e.g. ‘Albert Square’); and
- sounds and visual images (e.g. Eastenders theme tune, the BBC TWO ident).

4.6 For definitive advice on what constitutes a ‘BBC brand’ please refer to the Head of Brand Strategy in M&A.

### Section II Use of BBC brands: key principles

4.7 There are legitimate circumstances in which BBC brands may be used by the BBC’s Commercial Subsidiaries and/or by third parties. For example, the publication

of a magazine which is based on BBC programming (e.g. Top Gear) will normally use the programme brand in its title.

4.8 Without prejudice to paragraph 4.7, the use of BBC brands should comply with the following key principles:

- BBC brands should not be used in a manner that might reasonably be interpreted as endorsement or promotion of the activities of the BBC's Commercial Subsidiaries and/or third parties.
- The terms under which BBC brands are licensed should broadly reflect market practice. In some instances, this may involve levying a charge for use of a BBC brand (see paragraphs 3.12 to 3.20 for further details).
- BBC brands should not be associated with organisations which might affect the BBC's editorial integrity or potentially bring it into disrepute.
- There should be an appropriate degree of separation between the use of brands by the BBC's Public Service Groups and by its Commercial Subsidiaries to make it clear to consumers when they are in a commercial environment and when they are in a publicly-funded environment.

4.9 In addition, the use of BBC brands by the BBC's Commercial Subsidiaries or by third parties must:

- be properly and formally licensed under legally binding agreements;
- reserve for the BBC full approval over anything which carries BBC brands, including any associated promotional literature; and
- conform to BBC standards in relation to the artwork for logos and the ways in which BBC brands are used (as specified by M&A).

## Section III Use of BBC Brands: licensing for use in the BBC's Commercial Activities

4.10 The purpose of this section is to provide guidance on the legitimate use of BBC brands by the BBC's Commercial Subsidiaries (and/or third parties). As a general rule, BBC brands should only be used in Commercial Activities when the BBC has control over how, when and where they are used.

### **Names of Commercial Subsidiaries and their joint ventures**

4.11 The BBC's Commercial Subsidiaries and their joint venture businesses may incorporate the BBC initials and logo in their company name or use them in the trading names of their joint venture businesses provided the BBC's Commercial Subsidiary has a controlling interest in the entity.

4.12 Whether the BBC's Commercial Subsidiary has a controlling interest in an entity will be assessed on a case-by-case basis. The factors likely to be taken into account may include whether the BBC holds a majority of the voting rights and whether it has the right to appoint or remove a majority of its board of directors.

4.13 Contracts should provide for the company and/or trading names to be changed if the BBC's Commercial Subsidiary ceases to have control.

4.14 BBC brands should not be combined with third party brands in the names of joint ventures since to do so would risk the BBC's Commercial Subsidiary being perceived to endorse such brands and could adversely affect the legal standing of BBC brands. The reputation of the third party brand could also affect that of the BBC brand.

4.15 Where the BBC's Commercial Subsidiary does not have a controlling interest in a company, that entity should not use any BBC brand as part of its company name or trading name since it would pose a risk that the BBC could lose control of the use of its name.

4.16 However, the BBC's Commercial Subsidiary may, in any case, be allowed to make some other reference to the BBC such as a factual statement on marketing literature e.g. "a joint venture company between BBC Worldwide Ltd and X Ltd" and it may be licensed to use a relevant logo on such literature as an illustration of the relationship.

### **Goods and services produced by the BBC's Commercial Subsidiaries and their joint ventures**

4.17 The goods and services produced by the BBC's Commercial Subsidiaries and their joint ventures may be permitted to use BBC brands. However, to signal BBC standards to audiences and protect the BBC's reputation, this permission will only be given when:

- the goods or services are derived predominately from the output of the BBC's Public Service Groups; and
- in the case of joint ventures, the BBC's Commercial Subsidiary can demonstrate that it exercises sufficient management and editorial control to ensure that the BBC branded goods and services will comply with these, and other relevant BBC guidelines.

### **Goods and services produced under licence by third parties**

4.18 The BBC may license the rights to produce commercial goods or services to third parties since others may have specific expertise in the activities in question.

4.19 All third parties licensed by the BBC are subject to these Guidelines. The relevant licensing departments will need to ensure that adequate controls are in place to ensure compliance.

4.20 When third parties have been licensed to produce the BBC's commercial goods and services, it must be clear to consumers that the BBC has not manufactured the product.

4.21 The licensee may be credited in a factual way, but there should be clear separation between BBC brands and licensee brands. Only the licensee's relevant logo, and not those of retailers, should appear on a BBC-licensed product. In the case of own-brand products, the retailer's brand may appear in lieu of that of a manufacturer.

4.22 Except for specific designs for own-brand products, third parties licensed to produce commercial goods and services using BBC brands should not intend to sell or distribute exclusively through a particular retailer without objective justification.

### **Merchandising associated with BBC programmes**

4.23 The sale of merchandise associated with BBC programmes can generate revenues and, if managed properly, enhance BBC brands. Merchandise associated with BBC programmes (whether TV, radio or online) can be produced under license by BBC Worldwide or by third parties (including independent producers who retain certain rights in programmes aired on the BBC).

4.24 All merchandising associated with BBC (programme) brands must:

- be created explicitly from the content of the BBC programme and be consistent with the brand values of the programme; and
- serve to promote the programme.

4.25 The BBC's Commercial Agency has an oversight role in relation to all merchandising activities associated with BBC programmes.

### **Quality Approval**

4.26 The BBC must ensure that its brand values and editorial standards are being upheld when BBC brands are used by licensees. Accordingly, the BBC should always retain the right of prior approval of:

- goods and services which are intended to carry BBC brands, or making use of BBC owned or produced copyright material; and
- publicity and promotional material associated with these goods and services.

4.27 This right should be exercised by the relevant business area or licensing department, who are required to:

- operate a quality approval process, to ensure that appropriate use of BBC brands is being made; and

- allow monitoring of approvals given, including where brands are licensed to third parties.

## Section IV Use of BBC Brands: other activities

4.28 The purpose of this section is to provide guidance on how BBC brands may be associated, more generally, with the brands of third parties (and, in certain circumstances, with the brands used by the BBC's Commercial Subsidiaries).

### Promotional materials

4.29 Third parties may be eager to associate themselves, or their goods or services, with the BBC and its brands, in order to better promote themselves and their products. This may not be appropriate since it could imply that the BBC is endorsing their activities or it could potentially undermine the BBC's editorial integrity. However, there will be some legitimate situations when it may be acceptable to allow third parties to reference their relationship with the BBC.

### Testimonials

4.30 The BBC may receive requests from past or current suppliers (e.g. independent production companies, freelancers) for permission to describe their relationship with the BBC in their promotional materials to demonstrate the goods or services that they have provided. Examples of promotional materials might include case studies, press releases or show reels, and suppliers may request use of stills or clips from content aired by the BBC.

4.31 Such requests will normally be driven by the desire of suppliers to signal that they have worked with the BBC. There is a risk, however, that such references may be misleading or may imply BBC endorsement of that supplier. Contracts with suppliers should, therefore, normally include a clause which requires the supplier to seek BBC permission for all promotional materials which reference its relationship with the BBC.

4.32 Permission to enable a supplier to reference their relationship with the BBC, whether that be in text format (e.g. in a press release or a case study) or in the form of a still or a clip of BBC Public Service content, may be granted as long as:

- the BBC is a satisfied customer of the suppliers' goods or services;
- the BBC has agreed in advance to, and retains editorial control over, such references; and
- references to the BBC are factual, accurate, not misleading with respect to the nature and scope of the relationship and do not imply BBC endorsement of any organisation.

4.33 In addition, the BBC will normally only grant permission for the use of stills or clips if the material in question has no direct connection with any BBC brands. In some instances, however, the nature of a supplier's business might be such that any

images of its goods or services would be widely perceived by viewers as being associated with BBC brands – for example, a set designed by a third party for a BBC programme.

4.34 In such circumstances, it might be acceptable for the suppliers to use such images in its promotional materials as long as the primary focus of the clip/still is the service provided rather than the BBC output. It will normally also be acceptable for the supplier to include a description in its written material of the relationship between these production images and the BBC.

#### **Promotional materials related to programmes supplied by independent producers**

4.35 When a BBC programme is commissioned from an independent producer, the BBC only licenses exclusive rights to such programmes for use by the BBC's Public Service Groups. The independent producer owns and controls all non-BBC use of clips and stills from that programme (subject to any explicit restrictions under the Terms of Trade). As a result, any supplier wishing to use stills or clips must ask permission directly from the independent producer. The BBC has no right to authorise such use.

4.36 An independent producer's use of this material is limited under the Terms of Trade. Generally they can produce their own promotional materials, including trails, which, if for use in the UK, may be used in any manner which is co-ordinated with and complementary to the BBC's promotional strategy for the programme. The independent producer must consult with the BBC in this regard. In addition, they can carry out their own business-to-business promotional activities provided they do not bring the BBC into disrepute.

#### **Promotional materials related to the provision of the BBC's digital services**

4.37 Digital platform operators and/or digital equipment manufacturers/retailers may wish to make licence fee payers aware that BBC channels and programmes are available via their goods and services.

4.38 The BBC may allow use of its brands by these parties in promotional materials, provided:

- the material is expected to help inform licence fee payers of the availability of the BBC's digital services; and
- more generally, the activity supports the BBC's contribution to 'building digital Britain'.

4.39 Care must be taken, however, to ensure that the use of BBC brands in this manner does not give rise to the appearance of BBC endorsement of those organisations.

4.40 Any use of BBC logos, brands or stills in this manner must be approved, in advance, by M&A.

## **Point of Sale promotions**

4.41 Certain BBC programmes and BBC commercial products may contain editorial reviews of goods and services (including 'awards'). The suppliers of goods or services that have been reviewed may wish to quote from the review either at the point of sale, or in promotional material. Such displays can be beneficial to the BBC, by promoting the programme or BBC commercial product which contained the review.

4.42 Accordingly, a short summary of a review may be permitted. However, the head of the relevant production area responsible for the output or the relevant editor must agree that:

- the reference is appropriate and editorially justified;
- the original review was editorially driven; and
- the proposed quotation is accurate and reflects the context of the whole item.

4.43 The relevant programme may be used to make reference to the source of the review.

## **Partnership arrangements**

4.44 The BBC's Partnership Code explains how the BBC manages its partnerships with public, private, not-for-profit and voluntary sector organisations. The Code does not apply to commercial relationships that the BBC enters into.

4.45 All proposals for partnership arrangements must comply with the BBC's Editorial Guidelines.

4.46 From a Fair Trading perspective:

- the BBC should only enter into partnerships with organisations that are consistent with the BBC's brand values and which would not bring the BBC into disrepute (see Section V below); and
- all off-air promotional activities by the BBC and its partner organisations should avoid the perception that the BBC is endorsing the third party's trading activities.

## **Joint ventures involving the BBC's Public Service Groups**

4.47 The BBC's Public Service Groups may participate in joint ventures (or similar initiatives) with third party organisations in order to help deliver the BBC's Public Purposes. For example, BBC World Service may partner with local media organisations in order to increase its distribution footprint in overseas territories.

4.48 Such joint ventures may be permitted to use BBC brands as long as, inter alia:

- the relevant BBC Public Service Group retains full editorial control over how BBC content is distributed, packaged and presented;
- the spirit of the guidance outlined in paragraphs 4.11 to 4.16 is adhered to;
- the activities of the joint venture and its partners would not bring the BBC into disrepute or undermine its brand values.

4.49 All such proposals should be referred, in advance, to the Fair Trading department.

## **Sponsorship**

4.50 From time to time, the BBC may wish to use sponsors to support its activities. Examples of activities that may attract sponsorship include commercial publications, pages of commercial websites and BBC events – both commercial and public service (see below).

4.51 The BBC should only accept sponsorship from third party organisations that are consistent with the BBC's brand values and which would not bring the BBC into disrepute (see Section V below).

4.52 All off-air promotional activities by the BBC and sponsors should avoid the perception that the BBC is endorsing the sponsor's trading activities.

## **Sponsorship of BBC Public Service Events**

4.53 The BBC mounts a number of public events, such as concerts and award ceremonies, which are held at outside venues and which in some instances may be permitted to accept sponsorship. For further details see the BBC's Editorial Guidelines and related guidance.

4.54 This type of sponsorship activity must comply with the Competitive Impact Principle outlined in Chapter I. In practice this will require as a minimum:

- Compliance with the BBC's Editorial Guidelines and related guidance (issued by Editorial Policy).
- Ensuring that the BBC obtains a market rate for the sponsorship opportunities on offer. This may involve, for example, making approaches to, and encouraging offers from, a number of potential sponsors.
- Monitoring by the Fair Trading department of the annual level of sponsorship revenue generated by the BBC.

4.55 As noted above, the BBC should not engage in any off-air activities that might imply endorsement of the sponsor, its goods or its services. In the context of events mounted by the BBC's Public Service Groups, marketing activities undertaken by sponsors should promote primarily the event which it is supporting and not suggest that the sponsor is putting on the event.

**4.56 For BBC Public Service events that involve on-air coverage by the BBC, all off-air promotional activity proposed by the sponsor must be referred in advance to the Fair Trading department.** The following should also be noted:

- It is not acceptable for the sponsor to take out advertisements on any broadcast media to publicise its sponsorship of an on-air Public Service event.
- Publicity about BBC events and broadcast coverage must not form part of a sponsor's direct marketing campaign.
- There should be an appropriate degree of separation between BBC brands and sponsor brands.
- Any use of the sponsor's name or logo should normally be accompanied by appropriate wording to explain its presence e.g. "supported by".
- No guarantees on the extent of BBC promotional activities should be given to a sponsor.
- All BBC press releases relating to the event must be cleared by the BBC Press Office in advance of distribution. A factual, non promotional reference to the sponsor is normally acceptable.

**4.57 All proposals for the sponsorship of on-air, Public Service events must be approved, in advance, by Editorial Policy.**

### **Joint promotions**

4.58 Joint promotions are sometimes used to publicise BBC programmes or BBC commercial products. For example, they may involve a special offer for a BBC video or book, or the giving away of a novelty item associated with a BBC programme.

4.59 From a Fair Trading perspective, for all joint promotion activities:

- any associations should not imply endorsement of the activities undertaken by third parties or the BBC's Commercial Subsidiaries. For example, in off-air marketing intended to promote the BBC's Public Service Activities there should be an appropriate degree of separation between sponsor brands and BBC brands;
- third party organisations should be consistent with the BBC's brand values and not bring the BBC into disrepute (see Section V below);

4.60 Guidance on joint promotions (and approvals where necessary) should be sought from M&A and Editorial Policy.

## Association with charities

4.61 The BBC has broadcast appeals for individual charities since 1927. Appeals are an important part of the BBC's remit as a public service broadcaster, and relate to the BBC's broader involvement in social action broadcasting, coverage of the work of the voluntary sector and policies on corporate social responsibility.

4.62 The BBC has a range of corporate charities including Children in Need and Sport Relief.

4.63 Proposals that involve the use of public funds or resources to support initiatives for the BBC's corporate charities or other charities should be referred, in advance, to Editorial Policy and the Fair Trading department.

## Section V Appropriate partners for the BBC

4.64 The value and reputation of the BBC brand may be damaged if any part of the BBC is seen to be associated with inappropriate third parties. This may arise where the BBC trades with such third parties (e.g. purchasing goods or rights from them) or where they are licensed to use BBC content or brands (e.g. clips, programmes).

4.65 The assessment of 'appropriateness' of a given partner is an editorial issue governed by the BBC's Editorial Guidelines. **Any activity involving a third party that could potentially undermine the BBC's editorial integrity must be referred, in advance, to the Editorial Policy department.** Examples of such organisations include:

- political parties, Government departments and foreign governments;
- lobbying organisations;
- religious organisations;
- charities;
- weapons suppliers or manufacturers;
- tobacco firms or those mainly known for tobacco related products;
- organisations involved in pornography; and
- alcoholic drinks manufacturers and suppliers.

## Annex I: Compliance and Reporting

A1.1 The BBC Executive Board has responsibility for ensuring compliance with the BBC's Fair Trading obligations, and is held accountable for compliance by the Trust. The Trust is informed by an annual independent Fair Trading audit undertaken by external auditors.

A1.2 The BBC Executive has implemented a set of Fair Trading systems and controls that operate across the BBC enabling it to monitor and assess compliance with the Trust's Fair Trading policies and the BBC's Fair Trading Guidelines. All BBC staff are responsible for ensuring that any activity with which they are involved complies with all relevant Fair Trading requirements, including relevant Fair Trading procedures.

A1.3 Where third parties wish to raise concerns about the BBC's compliance with its Fair Trading obligations, the BBC Executive has established a transparent, accessible means of redress through the [Fair Trading Complaints and Appeals Process](#).

### Monitoring, assessing and reporting compliance

A1.4 The BBC Executive monitors compliance through the Executive Fair Trading Committee ('EFTC'), a sub-committee of the BBC's Executive Board. The key Fair Trading systems and controls are set out below.

- A central Fair Trading department led by the Controller, Fair Trading & BBC Compliance Officer
- A set of Fair Trading procedures conforming to ISO 9001:2008 (an international standard for quality management systems), managed by Controller, Fair Trading & BBC Compliance Officer and audited biannually.
- A central compliance function which manages and provides advice on Fair Trading systems and compliance. It monitors performance to ensure Fair Trading policies and procedures are being followed across the BBC, liaises with auditors, collates information and provides analysis for relevant Trust and Executive sub-committees and manages the BBC's Fair Trading risk register.
- A set of reporting and reviewing requirements that includes, for example, reporting on performance against a set of Key Performance Indicators and against the requirements of the 4CC.
- A team of Fair Trading Advisers providing expert advice to BBC Public Service Groups and BBC Commercial Subsidiaries including, training, approvals, information and analysis. The Fair Trading Advisers also prepare quarterly returns in collaboration with senior group personnel.

- The Fair Trading department manages Fair Trading training for relevant staff throughout the BBC and maintains records subject to annual audit. BBC Worldwide manages its own training and the associated records.
- Group Directors (and CEOs for the Commercial Subsidiaries) are required to declare each quarter that their group/subsidiary has complied with all the relevant Fair Trading policies and procedures.
- Each Group Director is required to appoint a Fair Trading Representative, typically a member of the Group Management Board with responsibility for compliance.
- A network of 'Fair Trading Representatives' and 'Fair Trading Champions' throughout the BBC, with responsibility for promoting and supporting the Fair Trading regime.

## Fair Trading Complaints

A1.5 The Controller, Fair Trading & BBC Compliance Officer is responsible, on behalf of the BBC Executive, for investigating complaints about Fair Trading issues in the first instance, in accordance with the BBC's published Fair Trading Complaints and Appeals Process. Any member of BBC staff who receives a complaint or criticism that may constitute a Fair Trading complaint should contact the Fair Trading department immediately.

A1.6 One of the EFTC's responsibilities is to consider Fair Trading complaints. The EFTC appoints a Complaints Panel to do this. The Complaints Panel normally appoints the Controller, Fair Trading & BBC Compliance Officer as the Case Officer for investigating the complaint. The Case Officer presents a report of his investigation to the Complaints Panel for adjudication. The Complaints Panel is chaired by a non-executive director and comprises a majority of non-executive directors. The Complaints Panel may select additional members where appropriate.

A1.7 In addition to Fair Trading matters a Fair Trading complaint may cover a number of issues, including for example, editorial-related matters. In this case, the BBC Executive will agree a co-ordinated approach for handling the complaint, in accordance with the BBC Trust's Complaints Framework and will inform the complainant of the way in which its complaint will be handled.

A1.8 If the complainant is dissatisfied with the conclusions of the Complaints Panel or the investigation, it may appeal to the Trust. Full details of the process for appeal are outlined in the published Fair Trading Complaints and Appeals Process.

## Potential Conflicts

A1.9 There may be situations where conflicts arise between the key Fair Trading principles outlined in Chapters 1, 2, 3 and 4. For example, preserving the reputation of BBC brands may involve a refusal to deal with a particular organisation, which

could result in an allegation that the BBC's actions are potentially having an adverse competitive impact.

A1.10 In such situations, advice should be sought from the Fair Trading department. In all cases, the BBC's obligations to comply with all relevant, external legal and regulatory obligations will take precedence when deciding the appropriate course of action.

## Annex 2: Guidance on UK/EU Competition Law

### Introduction

The BBC's activities may be scrutinised under either EU or UK Competition Law. Both EU and UK Competition Law prohibit:

- anti-competitive agreements or arrangements (Section I); and
- the abuse of a dominant market position (Section II).

The BBC must also comply with EU Law on State Aid (Section III)

### I Anti-competitive agreements or arrangements

Agreements, decisions or concerted practices between undertakings with an object or effect to restrict, prevent or distort competition could give rise to a breach of Competition Law.

There is no requirement under either EU or UK Competition Law for there to be a formal agreement in order for Competition Law to apply. Accordingly, any agreement (for example, oral or "gentlemen's agreements") may infringe Competition Law, if found to be anti-competitive in its object or effect. Direct or indirect contact between competitors, the object or effect of which is to influence a competitor's conduct on the market, may also be considered as concerted practice.

Anti-competitive agreements may be exempt if they give rise to benefits that outweigh the anti-competitive effects. Businesses are expected to assess agreements themselves in order to establish whether they might benefit from an individual exemption.

An anti-competitive agreement is automatically void and unenforceable. Additional consequences are fines and in certain cases even criminal action against the individuals that participated in a cartel (horizontal anti-competitive agreement). Participation in anti-competitive agreements can also expose those involved to claims for financial loss (damages) suffered by those affected by the conduct (e.g. customers, competitors, suppliers).

The following are examples of behaviour and agreements which could be found to be anti-competitive. It should be noted that this not an exhaustive list, and the Controller, Fair Trading & BBC Compliance Officer should be contacted in the event that you have any concerns:

- Price fixing: agreements which directly or indirectly fix the price, or a resale price, of a product or service e.g. requiring a retailer to adhere to a

published price list, or agreeing with a competitor the price at which the product or service will be supplied;

- Market sharing or sharing sources of supply: agreements between companies/organisations to share markets or sources of supply e.g. by territory, type or size of customer or in any other way;
- Limits on production or investment: such agreements are likely to impact on the price at which the product or service is acquired and may therefore be anti-competitive;
- Collusive tendering (bid-rigging);
- Information sharing: the exchange of confidential information, particularly pricing information such as the timing and quantum of price changes, and business development strategy; and
- Fixing trading arrangements: agreements that attempt to fix the terms and conditions on which parties offer products or services to the market.

In addition to the above prohibited activities, Competition Law advice from the Controller, Fair Trading & BBC Compliance Officer is essential if a proposed agreement or commercial activity involves any of the following:

- agreements or collaboration with third parties who could be construed as actual or potential competitors of the BBC (for example, joint selling/purchasing, joint advertising and promotion, sharing facilities or joint research and development);
- placing restrictions on the behaviour of our customers, contractors or partners which could affect competition in the market place (for example, non-compete obligation on a supplier to not provide services to a competitor);
- agreements with suppliers which affect markets where the BBC's market share may be significant (based on the most narrow definition of the market); and/or
- agreements which create a degree of exclusivity in a relationship between the BBC and a third party.

## II Abuse of a dominant position

Companies with a high market share ostensibly enjoy what is referred to as a 'dominant position'. If a company holds a dominant position in a market in a particular geographic area for the supply of certain goods or services, it has an additional responsibility under EU and UK Competition Law. There are certain things that dominant entities cannot do under competition law, whereas non-dominant entities are permitted to engage in the same conduct. For advice on

whether the BBC or one of its Commercial Subsidiaries holds (or is likely to hold) a dominant position in any market, please contact the Controller, Fair Trading & BBC Compliance Officer.

Where a dominant position is held, the following examples of behaviour are often prohibited. It should be noted that this is not an exhaustive list of potential abuses, and the Controller, Fair Trading & BBC Compliance Officer should be contacted in the event that you have any concerns.

Potential pricing abuses which could be deemed 'exploitative' including:

- Charging excessively high prices: charging prices that bear no reasonable relation to the economic value of the product supplied;
- Discriminatory prices or terms/conditions: this includes the charging of different prices to comparable customers, or categories of customers, for the same product, without an objective and proportionate reason (e.g. an objective reason includes where price differences are due to genuine cost differentials from supplying different customers).

Potential pricing abuses which could be deemed 'exclusionary' include:

- Charging excessively low ('predatory') prices to customers: charging prices below the incremental costs of production may constitute an abuse. Indeed, in certain circumstances, consistently not fully recovering a fair proportion of overheads or not charging a reasonable profit margin may constitute an infringement where the intention of the behaviour can be shown to be designed to eliminate a competitor;
- Anti-competitive discounting policies: these can include discounts which are conditional on customers buying all or a large proportion of their purchases from a dominant company, or where they are conditional on the purchase of another product from the dominant company;

Potential non-pricing abuses include:

- Refusal to supply: it may be an abuse to refuse to supply an existing or new customer without an objective justification for doing so;
- Tying: making supply of one product conditional on the customer accepting another product.

It is important to note that many of the above 'abuses' are also applicable to the purchasing activities of a dominant company. For example, if a dominant company imposes unfair contract terms on a supplier or insists on paying excessively low prices for a particular good, service or right, these may constitute infringements of Competition Law.

## **The competition authorities and their powers**

Investigation of potential anti-competitive behaviour and enforcement of Competition Law is overseen by a number of bodies. At the EU level, the European Commission is the responsible body. In the UK, the OFT is the primary body entrusted with the enforcement of UK competition rules. In addition, Ofcom has concurrent powers which give it almost identical powers to those of the OFT to enforce UK competition law within the sectors it regulates. Both the OFT and Ofcom also have the power to apply EU Competition Law where conduct occurring in the UK has the potential to affect trade between Member states.

Both the OFT and Ofcom have the power to enter and search premises either with or without notice when they have reasonable grounds for suspecting that there has been a breach of Competition Law. They may require any person on the premises to produce documents which may be relevant to an investigation (including information held on computer); to provide explanations of such documents; and to take copies away with them. The European Commission has similar powers.

The OFT has powers of surveillance, such as watching an individual's office and the ability to use informants with regard to investigations concerning possible breaches of Competition Law.

In addition, where the OFT is investigating possible criminal cartel activity, it has intrusive surveillance powers, including the ability to use surveillance devices and to access communications data (for example, obtaining records of telephone numbers called). The Serious Fraud Office has similar powers to those of the OFT with regard to the investigation of a suspected criminal cartel activity.

The consequences to the BBC of any breach of Competition Law are severe, since they include:

- fines of up to 10% of worldwide turnover, in any one year;
- contracts and agreements with third parties being void and unenforceable;
- damages payable to third parties;
- damage to the BBC's reputation; and
- substantial costs and disruption associated with regulatory investigation.

The consequences for an individual found to have breached the competition rules are also severe, since they include:

- imprisonment for a maximum of 5 years and/or unlimited fine for dishonest participation in criminal cartel activity (price fixing, limitation of supply or production, market sharing and bid rigging); and

- disqualification as a director of a UK company for up to 15 years for breach of either UK or EU agreements prohibitions on anti-competitive agreements.

In addition, the European Commission, OFT and Ofcom all have power to grant immunity from prosecution and/or fines in cases where information is provided to them by a participant in a cartel.

It is a criminal offence under UK Competition Law for any individual to: deliberately obstruct the regulator's inspectors in the exercise of their powers; to fail to comply with a lawful requirement imposed by the inspectors to produce a document or explanation; to intentionally or recklessly make a false or misleading statement; or destroy or falsify documents covered by any investigation.

### **What should you do?**

You should contact the Controller, Fair Trading & BBC Compliance Officer in the event that you have any concerns as to whether an activity could breach any aspect of EU or UK Competition Law.

You should contact the Controller, Fair Trading & BBC Compliance Officer in the event that you:

- are asked by an external entity to participate in conduct which may breach either UK or EU Competition Law, particularly where you suspect that a cartel is in existence;
- become aware that the BBC, or any of its Commercial Subsidiaries may be involved in a cartel;
- are contacted by a competition authority; and/or
- are raided by a competition authority as part of an investigation (see the procedures contained in 'What to do in the event of a Dawn Raid' below).

The BBC's Public Service Groups and its Commercial Subsidiaries must ensure that staff involved in commercial activities or dealings with commercial organisations are adequately briefed on Chapter 3 of the Fair Trading Guidelines. This is delivered via the Fair Trading Training and Awareness Programme explained in Annex I of the Fair Trading Guidelines.

Competition Law training is provided by the Fair Trading & Regulatory Legal department. Additional detailed guidance on Competition Law is available from the Controller, Fair Trading & BBC Compliance Officer.

## **What to do in the event of a 'Dawn Raid'**

### **When the officials arrive**

- Note the identities of officials.
- Contact the General Counsel's Office (020 8008 1886) or the Fair Trading & Regulatory Legal department (020 8008 1871) immediately.
- Do not sign any document shown to you by the officials.
- Show officials into a room free of documents and computers – do not allow them to walk around the building.
- If a member of the Legal Division is unable to meet the officials, ask them to speak to one of the named lawyers by telephone.
- Contact those staff members the officials ask to meet so that they are ready to attend the investigation.
- Do not destroy or alter any relevant documentation during or after the inspection.

### **Meeting the officials**

- The BBC's lawyers will check the validity and nature of authorisation and supporting documents.
- An appropriate staff member will be designated team leader to assist the officials during the visit. The team leader introduces the team, including administrative assistants.

### **During the investigation**

- You have a legal obligation to cooperate actively – this includes unlocking cabinets and files.
- Do not volunteer information outside the ambit of the questions.
- Do not speak to the officials in the absence of a BBC lawyer.
- Provide the officials with access to the documents they seek but check to make sure the documents they copy are within the scope of their authorisation.
- The BBC's lawyers will advise on privilege against self-incrimination.
- If you don't know the answer to a question, explain this to the officials and offer to provide a written answer later.
- You may consult the BBC's lawyers or your colleagues in private where necessary.
- Officials may work in several places at once. Try to ensure that each official is "shadowed" by a BBC lawyer or a member of the team responding to the inspection.
- Take notes of all questions/answers, every file examined and copies of all documents copied.
- Officials may access computer files as well as paper files.
- The BBC's lawyers will advise on documents protected by legal privilege (confidential legal advice), which officials may not copy.

### **Before the officials leave**

- Keep a complete copy of all documents/material copied and taken by the officials.
- Ask the officials if they have finished or whether they need to return another day.
- Ask the official(s) to sign a note acknowledging the documents copied.
- Inform the officials that you are claiming confidentiality over information supplied to them.
- Keep a record of the name of the officials you dealt with and the Competition

Authority Case Handler.

- Officials may ask you to sign a note minuting the investigation – check this carefully and consult a BBC lawyer first.

#### **After the officials have left**

- Ensure notes are typed up that day, if possible.
- Alert a BBC lawyer if you think that any documents copied were irrelevant/privileged.
- Provide written answers to any questions you were not able to answer (in consultation with a BBC lawyer).
- The Controller, Fair Trading & BBC Compliance Officer will review the investigation, assess the likelihood of infringement and the strength of defence.

### III EU Law on State Aid

The BBC must also comply with State Aid law.

Broadly, the EC Treaty prohibits any aid granted through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain firms or the production of certain goods. In the case of the BBC, the licence fee, and assets acquired or developed using the licence fee, are State resources. The aid in question can take a variety of forms and in the case of the BBC can include granting selected third parties use of BBC resources without seeking payment at market rates.

The consequences of any breach of EU Law on State Aid are severe, since they include:

- the immediate full repayment of the aid by the recipients to the public body;
- damage to the BBC's reputation; and
- substantial costs and disruption associated with regulatory investigation.

#### **What should you do?**

If you are considering undertaking any activity that may raise State Aid issues you must contact the Controller, Fair Trading & BBC Compliance Officer.

## Annex 3: Guidance for the trailing of BBC Programme-Related Materials on BBC public service television and radio services

This guidance outlines the approach the BBC will take when assessing the suitability of trailing BBC Programme-Related Materials on its public service television channels. They apply equally to BBC Programme-Related Materials produced by BBC Worldwide and by third party publishers.

This guidance is based on the principles set out in the BBC's Editorial Guidelines, the Trust's Competitive Impact Code on Cross and Digital TV Promotions and the OFT Undertaking.

This guidance is not intended to address on-air mentions of BBC Programme-Related Materials within programmes. Such mentions are subject to the BBC's Editorial Guidelines.

The BBC's Media Planning Team (within M&A) implements these guidelines with respect to trails on the BBC public service television channels, with relevant referrals where necessary. It receives and processes requests to trail BBC Programme-Related Materials. **Trails on BBC public service radio services are dealt with directly by the relevant channel controller, but must be referred in advance to the Chief Adviser, Editorial Policy.**

All mentions of BBC Programme-Related Materials in trails are at the discretion of Media Planning. No trail is guaranteed and no contract should promise an on-air trail. In cases of difficulty Media Planning will consult with Editorial Policy and/or Fair Trading.

The BBC's Media Planning Team compiles records of all trails requests received and the outcome of the application. The records detail the application (e. g. the slot, its duration, the programme after which the trail is requested, the product to be trailed and, where the trail request is accepted, the editorial rationale for each trail. The justification for rejecting a trail request is also recorded).

To enable Media Planning to be satisfied that the various editorial tests outlined below have been met, a copy of any product being submitted for a trail request must be made available on request (and should always be retained by the submitting agency – BBC Worldwide or the Commercial Agency on behalf of third party licensees).

The submitting agency should, as part of its application for a trail, provide a description of how and why the product meets the test in these guidelines and, on request, be able to provide documentary evidence of the editorial linkages – e.g.

appropriate meetings of relevant editorial staff – between the product for which a trail is being requested and the BBC programme preceding the proposed trail.

## General Principles

The BBC's Editorial Guidelines set out the BBC's editorial values and give guidance about on-air references to BBC Programme-Related Materials and BBC Commercial services.

The BBC believes that only books, audio recordings, DVDs, CDs and CD-Roms are the type of BBC Programme-Related Materials that can be justified for a trail for clear editorial and public purpose reasons. The BBC will not transmit trails for any other types of products. Magazines must not be trailed on BBC radio, television or bbc.co.uk.

No BBC Programme-Related Materials other than those listed above and no other type of commercial product will be trailed. No toys, novelty items or entertainment games will be trailed. **Some BBC Programme-Related Materials that use game formats but have been designed specifically for clearly educational purposes may under certain circumstances be trailed. Editorial Policy must, however, be consulted in advance.**

Any BBC Programme-Related Material which is trailed must be:

- Directly relevant to the programme after which it is to be trailed;
- Under the BBC's editorial control;
- Commissioned, licensed or developed directly in conjunction with the associated programme; and
- Consistent with the BBC's editorial and ethical values.

Material which is trailed may be published by BBC Worldwide or by an outside organisation.

Trails or announcements after programmes should give simple factual information without any element of hyping.

The BBC will not normally trail BBC Programme-Related Materials related to BBC programmes on BBC public service Radio stations. **Any such proposal must be referred in advance to the Chief Adviser Editorial Policy.**

## Style of trails

Under the OFT Undertaking, all BBC magazine trails must be in the form of a static slide. Although the BBC no longer runs trails for magazines, it voluntarily applies the spirit of the OFT Undertaking to trails for all BBC Programme-Related Materials across all its public services. Only the following style of trails will be acceptable:

- Trails must be a static frame (or a voiceover); there can be no use of moving images.
- Static visuals should not include anything other than a shot(s) of the product.
- The shot(s) should not include any 'promotional' claims or materials, e.g. "Competition/ Free Gift Inside".
- "Split screen" product trails over the end credits of a programme are permitted.
- Voiceover only trails over the end credits are permitted.
- Visuals are voiced by BBC announcers and the scripts are written by the Domestic Stills team in Red Bee Media. These must not be altered without their prior agreement. Announcements must:
  - be made by a single speaking voice and not by any person who has appeared or whose voice has been heard, other than incidentally in the preceding programme,
  - not be made by a well known person.
- The slide or announcement:
  - must be objective and must not seek to endorse BBC Programme-Related Materials or otherwise persuade viewers to purchase,
  - may state the title of the product,
  - may not include price information,
  - may state the connection between the product and the immediately preceding programme,
  - may not include URLs, price information and retail/mail order telephone numbers,
  - may include details of the retail availability of the BBC Programme-Related Materials. Where details of retail availability are provided this must be done on a non-discriminatory basis. Therefore:
    - if one specific retailer is mentioned then all retailers carrying that material must be mentioned,
    - if one type of retail outlet (e.g. 'all good bookshops') is mentioned,

other types of retailer (e.g. online retailers) must also be mentioned.

- All trails aim to be approximately 10 seconds in length.

## Position of trails for BBC Programme-Related Materials

There can be no promotional mention of BBC Programme-Related Materials within programmes – this includes programme ‘breaks’ or sections within programmes, such as Breakfast, etc. Any mentions of BBC Programme-Related Materials in programmes must be only for strictly editorially justifiable reasons. Further advice is provided in Section 13 of the BBC’s Editorial Guidelines.

BBC Programme-Related Materials can only be trailed after BBC commissioned programmes. For the avoidance of doubt, BBC Programme-Related Materials may not be trailed after acquired programming (including films).

Product trails may only be broadcast after the BBC programme to which it is directly relevant. Directly relevant BBC Programme-Related Materials may first be trailed at the end of the second episode of a series aired weekly on any BBC public service channel. For the avoidance of doubt, however, if the BBC Programme-Related Materials are related to previous series of the same programme, they may be trailed at the end of the first episode of a subsequent series. **Where a series is stripped daily across the schedule referral must be made to Editorial Policy, who will advise on when it is suitable to begin trailing.**

If directly relevant BBC Programme-Related Materials are associated with one-off programmes, they may be trailed at the end of that programme.

As a general rule no commercial product trails are scheduled on Christmas Day or on New Year's Day.

Only one product trail may be placed within the same junction. Where there are competing demands for BBC Programme-Related Materials to be trailed in the same junction, BBC Media Planning will record its rationale for deciding which trail request to accept. Although no guarantees can be given, BBC Media Planning will also make best endeavours to ensure that the product which was refused an on-air trail initially is trailed following another relevant programme (provided the request meets the criteria of the guidelines). It is however possible to place more than one BBC Programme-Related Material in the same trail as long as all would qualify for a trail after that programme, in line with this guidance.

## Quantity of trails

The total quantity of product trails output in any seven day period on all the BBC’s public service channels, commencing 0600 on Saturday, must not exceed seven minutes. Note that although the seven minute limit in the OFT Undertaking applies

only to BBC magazines, the BBC voluntarily applies the seven minute limit to all trails of BBC Programme-Related Materials on all its public service television channels.

## Frequency of trails

BBC Media Planning will not normally schedule trails after every programme in a series. The level of trails scheduled across a series will be at the discretion of BBC Media Planning. However the BBC would normally expect the following guidance to apply; (for the avoidance of doubt this guidance applies on a channel by channel basis, i.e. the repeat run of a series on another BBC channel could also carry trails with the same frequency as outlined below):

- For continuing series, with three or more weekly episodes- e.g. EastEnders – no more than one trail every two weeks.
- For continuing series (or shows on a long term run of more than 13 weeks), shown weekly or twice weekly – no more than one trail every three weeks.
- Series of 13 weekly parts (typical quarterly run) – maximum four trails over the run.
- Series of less than 13 weekly parts – maximum of three trails over the run.

Any proposal to run product trails more frequently or as part of a scheduling pattern not listed above should be referred in advance to Chief Adviser Editorial Policy.

## Retail availability and television advertising

BBC Programme-Related Materials should normally be on sale (e.g. in retail outlets or online) at the time of the trail. However, where the product relates to a one-off programme, a trail will be acceptable as long as the product is available the next working day.

BBC Programme-Related Materials may not be trailed if they are advertised on television within six weeks on either side of the proposed trail. This applies only to television adverts commissioned specifically by the publisher and does not apply to television adverts by retailers that include the product as one of several titles featured in a sales promotion by that retailer (over which the publisher may have little or no control). For the purpose of this guidance “featuring several titles” means featuring more than two titles.

The BBC, its commercial partners or its licensees cannot be seen to be advertising BBC Programme-Related Materials on television and trailing them at the same time. The purpose of trails is to inform licence fee payers of BBC Programme-Related Materials related to BBC programmes that can enhance and extend their enjoyment of the original programme; if the product is already being advertised commercially

this brings into question the need to trail it as a public service activity. The BBC does not believe it is appropriate to do both concurrently.

## **Editorial Criteria for an on-air trail**

BBC Programme-Related Materials may only be trailed if they are directly relevant to the preceding programme. To be “directly relevant” a product must satisfy the following criteria.

### **Books, audio recordings of BBC programmes**

These must be the official publication of the series:

- For books this could also include a novelisation based on the BBC intellectual property of the programme, an official guide to the characters in a series or, for childrens’ publications, it could be an educational product which has been developed directly in conjunction with the series with a learning objective. Novelty BBC Programme-Related Materials such as sticker books aimed at a general audience, diaries, calendars etc. will not qualify for a trail. If in doubt refer to Editorial Policy.
- For audio recordings this could include the BBC radio version of the television series.

The publication should normally have the same title as the programme. For example, a presenter’s ‘motoring’ book could not be trailed after a Top Gear programme. Where the title differs in any way, such as the inclusion of a sub-title, advice should be sought from Editorial Policy.

For the avoidance of doubt “masthead” publications may not be trailed. This means that if a BBC programme or series is based on a pre-existing book, the book may not be trailed on-air. In the case of literary adaptations the book may not be trailed on air, even if stills from the BBC drama production are used on the cover.

### **DVDs and Videos**

DVDs and videos must be recordings of the programme or series (which, for the avoidance of doubt, would include compilations of clips from various programmes in a series). Such BBC Programme-Related Materials may also include (a minority of) additional material but that material must also comply with BBC guidance on additional material on audio visual product (which can be sought from Editorial Policy).

### **PC CD-Roms and other computer formats**

Educational BBC Programme-Related Materials on computer formats may be trailed if they are directly relevant to the programme after which it is to be trailed, i.e. it

must have the same title as the programme; it must use the programme intellectual property (characters, scenarios etc). In addition it must be designed to have a specific educational/learning purpose.

Entertainment games which have not been designed for a specifically educational purpose will not be trailed on air.

### **Music soundtracks**

Music soundtracks may be trailed if they are directly relevant to the preceding programme. They must have the same title as the programme or series; they must consist of the music of, or the music from, the programme – which may include the soundtrack of the series.

In certain circumstances the BBC may commission or co-produce special performances of musical events such as concerts, operas or ballets. In such cases it may be possible to trail a recording of that event after the programme which covers the event. Not all such BBC Programme-Related Materials, however, will qualify for a trail. **Reference must be made in advance to Editorial Policy before any trails can be granted.**

### **Multiple visuals**

Multiple visuals, e. g. Video, Book and Audio recording collections in a single trail, may be scheduled after the programme to which they are directly relevant, as long as all meet the criteria outlined in this guidance – these should be recognised and agreed with BBC Media Planning prior to the start of the relevant series. Normally, there should be no more than three BBC Programme-Related Materials on one visual.

It is possible to trail the official publication(s) of a series during the following series. For example, it is possible to trail a DVD of Series One of 'The Office' during Series Two.

### **Children's BBC Programme-Related Materials**

The BBC will not trail BBC Programme-Related Materials on its digital childrens channels, CBBC and CBeebies.

DVDs will not be trailed within CBBC blocks on analogue channels such as afternoons and Sunday morning. Only books and educational computer formats may be trailed in these slots and then only if they are designed to serve a specific educational/learning purpose.

The same visual should not be trailed more than twice per month. During CBBC Presentation, all Children's visuals must be pre-recorded to avoid endorsement by

presenters. All visuals shown during childrens' programming should make clear that children should seek permission from an adult before buying.

DVDs, books and educational computer formats may be trailed after programmes aimed at older children, not in CBBC time.

### **Charity Linked BBC Programme-Related Materials**

In certain limited circumstances BBC Programme-Related Materials may be produced to help raise funds for a BBC charity initiative such as Comic Relief, Sport Relief or Children in Need. Some of these BBC Programme-Related Materials may be of a “novelty” nature. Such fund-raising BBC Programme-Related Materials may be trailed on-air in accordance with the BBC’s policy on charity fundraising initiatives.

**All requests for any trail of charity linked BBC Programme-Related Materials must be referred to the Chief Adviser Editorial Policy, well in advance as these need special consideration.**

## Annex 4: BBC World Service Trading Protocols

BBC World Service (“BBC WS”), the BBC’s Licence-Fee funded activities and the BBC’s Commercial Activities have developed a strong, mutually-beneficial trading relationship under the World Service Trading Protocols (“WSTP”) since they first came into being on 1 April 1997.

This paper updates the WSTP (last amended March 2001) in light of (i) the requirements of the BBC’s new Charter & Agreement (which came into force on 1 January 2007) and (ii) the need to adapt, clarify and simplify the overarching regime.

BBC WS activities are funded principally by a Parliamentary Grant-in-Aid<sup>2</sup>, paid through the Foreign and Commonwealth Office. The BBC’s other Public Service Activities are funded principally by the Licence Fee. The BBC’s Commercial Activities are funded principally by commercial income.

The WSTP are set within the overall context of the BBC Trust’s Fair Trading framework. This requires inter alia, that there should be financial separation between BBC WS and the BBC’s Licence Fee funded activities. This is necessary to ensure that licence fee funds are not used to support or subsidise BBC WS activities and equally, Grant-in-Aid is not used to support or subsidise Licence Fee funded activities.

The BBC’s Fair Trading Guidelines outline how the BBC Executive has interpreted the BBC Trust’s Fair Trading framework. The WSTP provide further guidance on the rules governing the trading relationship between BBC WS, the BBC’s Licence Fee funded Groups and the BBC’s Commercial Subsidiaries. The WSTP are not a contractual agreement between BBC WS, the BBC’s Licence Fee funded Groups and/or the BBC’s Commercial Subsidiaries. They are a framework within which detailed and separate contracts can be agreed.

### Key Principles of the WSTP

The three key principles of the WSTP are as follows:

- Fair prices should be charged for all goods and services supplied by the BBC’s Licence Fee funded Groups to BBC WS (and vice versa).
- Trading between the BBC’s Licence Fee funded Groups and BBC WS must be transparent and established on the basis of formal agreements.

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<sup>2</sup> Following the licence fee settlement agreed in 2010 the activities of BBC World Service will be funded by the BBC Public Service with effect from 2014.

- Trading between BBC WS and the BBC's Commercial Subsidiaries should be undertaken on an appropriate arm's length basis on normal market terms.

**Fair prices should be charged for all goods and services supplied by the BBC's Licence Fee funded Groups to BBC WS (and vice versa)**

The BBC's Licence Fee funded Groups may engage in trading activities with the BBC WS. For example, the BBC's Licence Fee funded Groups may provide the BBC WS with programming and accommodation.

The prices charged by the BBC's Licence Fee funded Groups for the provision of goods and services (including programming) to the BBC WS (and vice versa) should typically be "cost-based", i.e. in line with the first two bullets of paragraph 3.16 of the Fair Trading Guidelines.

**Trading between the BBC's Licence Fee funded Groups and BBC WS must be transparent and established on the basis of formal agreements**

Trading between the BBC's Licence Fee funded Groups and BBC WS should operate within the terms of formal agreements which are agreed prior to the commencement of the trading activity. Agreements must be capable of demonstrating compliance with the BBC's Fair Trading Guidelines.

The key provisions that should normally feature within formal agreements include:

- named individuals from both parties who take overall responsibility for the commission and delivery of the goods and/or services;
- a full specification of the goods and/or services required;
- a detailed breakdown, prepared by the supplier, of the agreed price for the delivery of the agreed specification;
- an undertaking by the supplier to aim to achieve break-even on income and expenditure over the course of each financial year;
- an agreement on the equitable manner in which risk and reward will be shared between the two parties. For budget surpluses or overruns, the default position shall be that the supplier of the goods and services assumes full responsibility and hence ownership of any financial gains / losses;
- the financial and other data to be collated and presented by the supplier to ensure that transparency is achieved and that performance can be evaluated;

- an agreed notice period, with respect to future significant variations in volumes and/or mix of goods and services provided;
- an agreement to conduct periodic joint reviews of performance against the agreed specification;
- where relevant, an agreement to allow commissioners reasonable access to appropriate financial and management information relating to the trading activity such that they can be satisfied that budget figures are set correctly and that actual charges can be monitored against the agreed pricing structure;
- a clause acknowledging the supplier's responsibility to ensure that reasonable procedures are being followed to ensure that goods and services are delivered in accordance with legal requirements and all relevant BBC guidelines;
- a statement where appropriate to explain how rights are to be handled within the agreement. For the avoidance of doubt, where BBC WS has fully funded a programme, it will retain the rights to possible future exploitation. All rights in material produced by Newsgathering will be held by BBC News;
- details of the method and timing of transactions so as to minimise cash flow disadvantages on both sides and to ensure best practice in the transaction process; and
- an outline of the process for resolving disputes relating to trading issues.

**Trading between BBC WS and the BBC's Commercial Subsidiaries should be undertaken on an appropriate arm's length basis on normal market terms**

Trading between BBC WS and the BBC's Commercial Subsidiaries should be undertaken on an appropriate arm's length basis on normal market terms. Guidance on setting prices for the supply of goods and services by BBC WS to the BBC's Commercial Subsidiaries (and vice versa) can be found in Chapter 3 of the Fair Trading Guidelines.

**How do we know if the requirements have been fulfilled?**

- BBC WS will review the WSTP on a periodic basis to ensure that they remain appropriate to the prevailing circumstances.
- BBC WS will report to the central Fair Trading team on any significant issues arising in relation to the WSTP.
- The BBC Executive will commission an independent external review on the BBC's compliance with the WSTP

## Definitions

“Agreement” means the Framework Agreement concluded between the Secretary of State for Culture, Media and Sport and the BBC on 30 June 2006 and any subsequent amendments.

“BBC” means the British Broadcasting Corporation and covers both the BBC’s Public Service Groups and the BBC’s Commercial Subsidiaries.

“BBC Executive” means the Executive Board of the BBC established by Article 7 of the Charter.

“BBC Trust” means the BBC Trust established by Article 7 of the Charter.

“BBC World Service” means the broadcast or other distribution of programmes and the delivery of other services by the BBC, aimed primarily at users outside the UK as set out in Section 65 of the Agreement.

“Charter” means the Royal Charter for the continuance of the BBC for the period ending 31 December 2016.

“Commercial Activities” means the Commercial Trading Activities and the Commercial Services.

“Commercial Services” means the services which are provided, or other activities which are undertaken, by the BBC’s Commercial Subsidiaries not primarily (or at all) in order to promote the Public Purposes, but with a view to generating profit.

“Commercial Trading Activities” means those Trading Activities carried out by the BBC in order to promote the Public Purposes but which may also generate a profit as listed in Section 101(2) of the Agreement.

Competition Law means (i) Article 81 and 82 of the Treaty establishing the European Communities; (ii) the Competition Act 1998 and the Enterprise Act 2003; (iii) other applicable national competition legislation and; (iv) relevant implementing regulations in relation to each of (i), (ii) and (iii) , as may be amended from time to time and State Aid Law.

“Competitive Impact Codes” means the codes required to be adopted and published by the Trust by Clause 66(2), (3) and (4) of the Agreement and dealing with those aspects of the operation of the BBC’s Public Service Activities that, in the Trust’s view, could raise significant issues regarding the competitive impact of the BBC’s activities.

“Consumers” means the ultimate users of a particular good or service in a relevant market.

“EC Treaty” means the Treaty establishing the European Communities.

“Editorial Guidelines” means the BBC’s Editorial Guidelines as reviewed from time to time by the BBC’s Editorial Policy team and available at [bbc.co.uk/editorialguidelines](http://bbc.co.uk/editorialguidelines).

“External Websites” means all websites which are not run by the BBC’s Public Service Groups or by the BBC’s Commercial Subsidiaries.

“Fair Trading Complaints and Appeals Process” means the procedure used to handle complaints that the BBC has not complied with the BBC’s Fair Trading Guidelines.

“Fair Trading Guidelines” means the guidelines required to be adopted and published by the Executive Board of the BBC under Clause 67(1)(a) of the Agreement.

“Grant-In Aid” means money provided to the BBC by the Foreign Secretary for the purposes of the BBC World Service under Clause 75(6) of the Agreement.

“IPTV” means Internet Protocol Television.

“Licence Fee Payers” means everyone to whom a TV licence is issued and any other person in the UK who watches, listens to or uses any BBC service or may wish to do so in the future.

“Licence Fee” means the fee payable on the issuance of a TV licence under section 364 of the Communications Act 2003.

“Non-Commercial Trading Activities” means the Trading Activities carried out by the BBC which are Public Service Activities and not carried out with a view to generating a profit and in the normal course of business will not make a profit.

“Ofcom” means the Office of Communications.

“OFT Undertaking” means the undertaking given by the BBC to the Office of Fair Trading in 1992 in relation to the cross-promotion of its magazines on BBC One and BBC Two.

“OFT” means the Office of Fair Trading.

“Public Purposes” means the BBC’s public purposes as set out in Article 4 of the Charter.

“Public Service Groups” means the entities carrying out the BBC’s Public Service Activities.

“Public Service Activities” means all BBC activities carried out primarily to promote the Public Purposes, including both services and non-service activities, except the Commercial Trading Activities.

“Public Service Activity Inputs” means the capacity, facilities, programmes rights and other inputs available to the BBC’s Public Service Activities.

“State Aid Law” means Articles 87–89 of the Treaty establishing the European Communities and relevant implementing regulations, as may be amended from time to time.

“Fair Trading Policies & Framework” means the statement adopted by the Trust under Section 66(1) of the Agreement setting out its Competitive Impact Policy.

“Fair Trading Policies & Framework” means the statement of policy on fair trading required to be adopted by the Trust under Article 24(2)(k) of the Charter.

“Trading Activities” means the receiving or providing by the BBC and/or its commercial subsidiaries of goods, services or rights and includes the BBC’s Commercial Trading Activities as well as its Non-Commercial Trading Activities.

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