

## **BBC Executive Fair Trading Bulletin**

### **August 2007 – November 2007**

BBC Executive Fair Trading Bulletin.....	1
August 2007 – November 2007 .....	1
<b>SUMMARY OF COMPLAINTS</b> .....	1
Fair Trading Complaints made to the Office of Fair Trading, Ofcom or the European Commission .....	1
Fair Trading Complaints to the BBC.....	2
Genes Reunited and ‘Who Do You Think You Are?’ .....	3
Diamond Publishing and ‘Who Do You Think You Are?’ .....	3
ABM Publishing Ltd and ‘Who Do You Think You Are?’ .....	4

The complaints detailed below reflect the outcome of investigation by BBC Executive in line with the BBC’s process for dealing with Fair Trading Complaints. Further details of this process can be found at:

[www.bbc.co.uk/info/contactus/fair\\_trading.shtml](http://www.bbc.co.uk/info/contactus/fair_trading.shtml). Where complainants are dissatisfied with Executive’s findings they have the right of appeal to the BBC Trust.

### **SUMMARY OF COMPLAINTS**

This is a summary of complaints made against the BBC on fair trading grounds between 21 July 2007 and 13 November 2007 including complaints that have been made directly to the BBC, to the Office of Fair Trading (OFT), to Ofcom and to the European Commission.

Updates are provided regarding complaints recorded in previous Fair Trading Bulletins. Where complaints have been rejected by external competition authorities, this will also be reported.

### **Fair Trading Complaints made to the Office of Fair Trading, Ofcom or the European Commission**

There have been developments in the following investigation by Ofcom, as reported in previous Bulletins.

- *Complaint about Red Bee Media’s contracts to supply media access services to Channel 4 and the BBC.*

It has been reported in previous Bulletins that IMS (a supplier of media access services) had submitted a formal complaint to Ofcom relating to an agreement for Red Bee to provide media access services to Channel 4.

Media access services are services, including subtitling, audio-description and signing, designed to meet the needs of individuals who are deaf or hard of hearing or

blind or partially sighted. IMS had alleged that the agreement between Red Bee and Channel 4 was in breach of competition law.

In July 2005 Ofcom opened a formal investigation into the allegations made and the BBC responded to a variety of information requests from Ofcom.

In December 2005 Ofcom added to the scope of its investigation the consideration of whether Red Bee's media access services contract with the BBC also infringed competition law.

On 30 May 2007, Ofcom published its findings. It concluded that:

- The Channel 4 contract does not appreciably restrict competition and there are therefore no grounds for action.
- In respect of the BBC contract, in light of a change to the duration of the contract, and in light of other priorities, no further resources were to be committed to this issue and the case would be closed.

The allegations by IMS were therefore not upheld.

On 13 July 2007, the Competition Appeals Tribunal (CAT) gave notice of an appeal by IMS against Ofcom's decision. IMS is challenging both Ofcom's non-infringement decision in relation to the Channel 4 contract (and its finding that Red Bee is not dominant in the relevant market) and the case closure in respect of the BBC contract.

IMS argues that *"Ofcom has committed errors of assessment in the application of the Chapter I and Chapter II prohibitions and Articles 81 and 82 of the EC Treaty in respect of BBC Broadcast's [Red Bee] contracts with channel 4 and the BBC respectively"*.

Following representations by Ofcom, BBC and Red Bee the CAT was asked to consider, as a preliminary issue, whether Ofcom's decision to close the case in respect of the BBC contract, was an appealable decision under the Competition Act. On 31 October 2007 the CAT published its decision in relation to this preliminary issue. The CAT has confirmed that the case closure decision by Ofcom in relation to the BBC contract is not an appealable decision.

The CAT is continuing to consider the remaining aspects of IMS's appeal.

The BBC and Red Bee both made applications to intervene in the appeal process and these were granted by the CAT.

### **Fair Trading Complaints to the BBC**

The BBC received three new complaints during this period. Following investigation by the BBC, the Executive Fair Trading Committee (EFTC) Complaints Panel has adjudicated in relation to each of these.

Genes Reunited and 'Who Do You Think You Are?'

On 5<sup>th</sup> September 2007 Friends Reunited (part of the ITV Group and owner of the website 'Genes Reunited') wrote to the BBC Trust making the following allegations:

1. BBC's Family History website ([www.bbc.co.uk/history/familyhistory](http://www.bbc.co.uk/history/familyhistory)) offers a range of external links to competitors of *Genes Reunited*. The complainant alleges that the omission of links to *Genes Reunited* constitutes anti-competitive behaviour by the BBC.
2. The BBC branded Who Do You Think You Are? magazine and website intends to use Ancestry.co.uk (a competitor to *Genes Reunited*) to provide content, thereby offering unfair advantage to Ancestry.co.uk.

The EFTC Complaints Panel adjudicated on 30<sup>th</sup> October and did not uphold the complaint. The response to the Complainant communicated the following findings:

- The BBC was justified in not providing links to Genes Reunited during the period that the complainant was promoting prominently gambling services.
- Ancestry.co.uk does not supply content to the Who Do You Think You Are? magazine or website, or receive any unfair advantage from the Who Do You Think You Are? magazine or website.
- There was no breach of the BBC's Royal Charter, its Agreement with DCMS, UK/EC Competition Law or the BBC's Fair Trading Guidelines.

Diamond Publishing and 'Who Do You Think You Are?'

On 13<sup>th</sup> September 2007 Diamond Publishing (publisher of 'Family History Monthly') wrote to the BBC Trust with regard to the launch of BBC Worldwide's new '*Who Do You Think You Are?*' magazine. The complainant makes the following Fair Trading allegations:

1. Cross-subsidy / Fair Pricing: The complainant enquires as to whether BBC Worldwide acquired the magazine rights and related assets (such as video clips) at a fair market price "as required both by EU rules on State Aid and by the BBC's Royal Charter?", alleging that not to have done so would also constitute "cross-subsidy".
2. Separation: The complainant enquires as to whether BBC executives were involved in the magazine rights negotiations between Wall To Wall Media (the rights owner and independent producer of the television series) and BBC Worldwide, and seeks reassurance that there was no connection between BBC's decision to commission further television series from the independent producer and the independent producer's decision to licence magazine rights to BBC Worldwide.
3. Commercial efficiency: The complainant provides a range of market analysis to support its argument that the value of advertising revenue and sales volumes of

magazines in the genealogy sector are “very small and in decline”, that the sector has reached saturation point, and that the launch of the Who Do You Think You Are? magazine by BBC Worldwide must be high risk with limited profit potential and thereby suggesting that it cannot be commercially efficient (as required by the Four Commercial Criteria).

The EFTC Complaints Panel adjudicated on 9<sup>th</sup> November and did not uphold the complaint. The response to the Complainant communicated the following findings:

- Bristol Magazines Limited (BML), the wholly owned subsidiary of BBC Worldwide which licensed the use of the Who Do You Think You Are? brand and programme content from Wall to Wall, is paying fair market prices for all rights and benefits received from Wall to Wall.
- BBC’s commissioning personnel had no knowledge of any discussions between BML and Wall to Wall, proper separation between public service and commercial discussions existed.
- The magazine launch is expected to be commercially efficient. It satisfies BBC Worldwide’s internal performance requirements. BBC Worldwide and BML expect to generate an appropriate return on investment and have a track record of growing similar sectors.
- There was no breach of the BBC’s Royal Charter, its Agreement with DCMS, UK/EC Competition Law, State Aid Law or the BBC’s Fair Trading Guidelines.

ABM Publishing Ltd and ‘Who Do You Think You Are?’

On 12<sup>th</sup> September 2007 ABM Publishing Ltd (publisher of, inter alia, ‘*Family Tree Magazine*’) wrote to the BBC Trust with regard to the launch of BBC Worldwide’s new ‘*Who Do You Think You Are?*’ magazine. The complainant makes the following Fair Trading allegations:

1. The complainant appears to allege that BBC Worldwide’s Who Do You Think You Are? (WDYTYA?) magazine cannot be commercially efficient (as required by the Four Commercial Criteria) because the market is shrinking and, the complainant “fail(s) to see how the BBC can possibly show a worthwhile return”.
2. The complainant also alleges “unfair advantage” because the magazine launch coincides with the transmission of the new BBC television series.
3. The complainant questions whether the BBC Trust should have been involved in the approval to launch the magazine.

The EFTC Complaints Panel adjudicated on 9<sup>th</sup> November and did not uphold the complaint. The response to the Complainant communicated the following findings:

- The magazine launch is expected to be commercially efficient. BBC Worldwide and Bristol Magazines Limited (BML), a wholly owned subsidiary of BBC Worldwide, expect to generate an appropriate return on investment and have a track record of growing similar sectors.

- BML was not in receipt of any “unfair advantage” from the BBC’s Public Services.
- There was no requirement upon BML or BBC Worldwide to seek the approval of the BBC Trust prior to launch of the magazine.
- There was no breach of the BBC’s Royal Charter, its Agreement with DCMS, UK/EC Competition Law, State Aid Law or the BBC’s Fair Trading Guidelines.