

# THE BBC TRUST'S FAIR TRADING POLICIES AND FRAMEWORK

November 2011

## Introduction

**Part 1** of this document sets out the collective requirements of the Trust's Fair Trading framework, including those requirements set out in its Fair Trading policies as previously separately published. For clarity, Part 1 of this document fulfils the Trust's obligation to publish a Statement of Policy on Fair Trading, and to publish a Statement of Policy on Competitive Impact.

**Part 2** of this document sets out in further detail the application of the Trust's duty to have regard to the BBC's competitive impact of the BBC's activities on the wider market in the context of the Trust's wider regulatory functions, such as those related to the approval of new services including Public Value Tests.

**Part 3** of this document sets out the individual codes (of which there is currently one) that the Trust is required to publish under the Charter and Agreement in consultation with Ofcom.

The BBC Charter and Agreement require the Trust to:

- *“have regard to the competitive impact of the BBC's activities on the wider market”*<sup>1</sup>
- adopt and publish a *“Statement of Policy on Fair Trading”*<sup>2</sup>
- adopt and publish a *“statement of its policy on the competitive impact of the BBC's activities on the wider market”*<sup>3</sup>
- adopt and publish codes dealing with *“those aspects of the operation of the (BBC's) UK Public Services that in its view could raise significant issues regarding the competitive impact of the BBC's activities”*<sup>4</sup>

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1 Charter, Article 23(e)

2 Charter, Article 24(2)(k)

3 Agreement, Clause 66(1)

4 Agreement, Clause 66(2)

- keep its policies and codes under review, and to “conduct a comprehensive review of its policies and codes, which must include public consultation, at least once every three years.”<sup>5</sup>

The Executive is required to draft separate Fair Trading Guidelines which set out the practical implications of the Trust’s policy on fair trading and the application of the policy on competitive impact in so far as they relate to the functions of the BBC Executive and its subsidiaries. The Trust approves the Executive’s Guidelines before they are finalised and published, and holds the Executive to account for compliance with them. When taken together, the Trust’s policies and codes, and the Executive’s Guidelines, form the BBC’s Fair Trading framework.

The Trust’s Complaints and Appeals Board<sup>6</sup> will consider appeals in relation to alleged breaches of the fair trading guidelines or the Trust’s policies or codes, unless the Trust considers that there is an alternative and more appropriate process available to consider the complaint. In this regard, the Trust has no statutory powers to enforce competition law. Complainants who seek formal decisions in respect of competition law should refer their complaint directly to the competition authorities. These include:

- The Office of Fair Trading, (OFT) under its Competition Act 1998 and Enterprise Act 2002 powers;
- The Office of Communications (Ofcom) as the regulator for the UK communications sector which exercises concurrent powers under the Competition Act 1998 and the Communications Act 2003 relating to broadcasting, spectrum and telecommunications;
- The European Commission which investigates complaints relating to competition law and state aid law.

In carrying out its role in relation to the BBC’s Fair Trading Framework, the Trust will:

- request that Ofcom conduct the Market Impact Assessments for the Trust’s Public Value Tests;
- seek advice from Ofcom where it considers appropriate in relation to impact assessments in the course of conducting the Trust’s significance tests;
- not act in a way that might prejudice any investigation by a competent competition authority or under any other regulatory regime.

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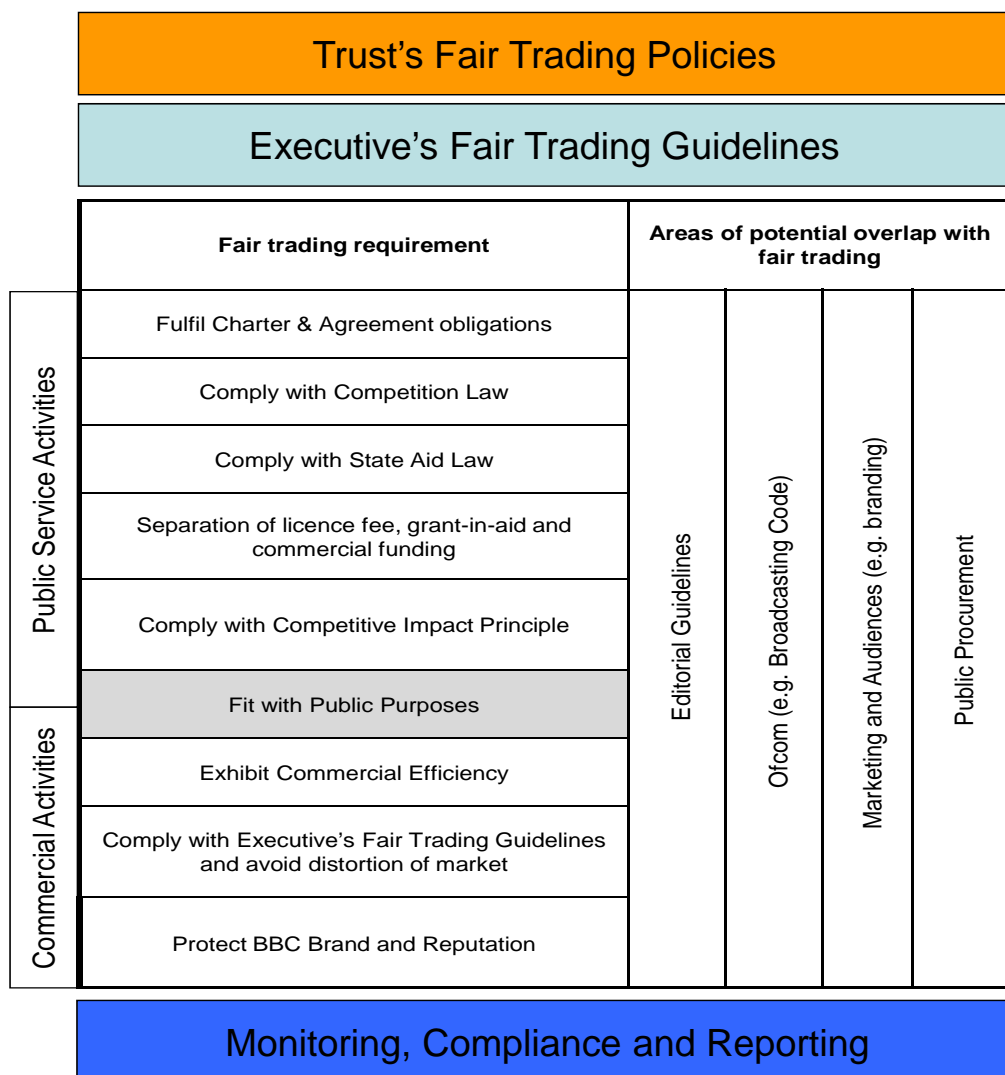
<sup>5</sup> Agreement, Clause 64(4)

<sup>6</sup> The terms of reference for the Trust’s Complaints and Appeals Board will be published shortly on the Trust’s website

# Part I: The Trust's Fair Trading framework

## What is fair trading?

The diagram below attempts to bring together the various elements that make up the BBC's Fair Trading framework, and summarises the fair trading obligations that apply to the BBC's activities. Further detail is provided in this section on each of these requirements.



The Trust recognises that different stakeholders interpret the term 'fair trading' in different ways. The Trust considers that the term 'fair trading' encompasses the following requirements which have been imposed on the BBC:

- Competition law

The BBC is subject to competition law. The Trust regards the obligation to comply with competition law as a fair trading requirement.

- Charter and Agreement

The Charter makes it clear that the BBC exists to serve the public interest and that its main object is the promotion of the Public Purposes through its Public Service Activities<sup>7</sup>. The Charter and Agreement also requires that the Trust has regard to the BBC's competitive impact on the wider market.

The Charter and Agreement require that the BBC's Commercial Activities are not carried out directly by the BBC or funded by the public funds available to the BBC (the Licence Fee and Grant-In-Aid) and are limited to those which:

- fit with the BBC's Public Purpose Activities;
- exhibit commercial efficiency;
- do not jeopardise the good reputation of the BBC or the value of the BBC brand;<sup>8</sup>
- comply with this Policy and the Fair Trading Guidelines and avoid distorting the market.

In complying with these requirements, the Trust considers that the BBC has an obligation to deal with other companies and individuals in accordance with the principles set out in the Fair Trading framework. In the Trust's view, these are Fair Trading requirements.

### **Summary of key fair trading principles and requirements**

The BBC is required by this Statement of Policy on Fair Trading to abide by the following fair trading principles, which are derived from the Charter and Agreement requirements set out in the introduction to this document:

- a) The BBC must comply with the requirements of competition law, including state aid law, when carrying out both its Public Service Activities and Commercial Activities.
- b) The BBC must not use the Licence Fee or Grant-In-Aid to fund its Commercial Activities. Amongst other matters, this requires operational and financial separation of the BBC's Public Service Activities and its Commercial Services.

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<sup>7</sup> Charter, Article 3

<sup>8</sup> Agreement, Clause 69(1)(c)

- c) When carrying out its Public Service Activities, whilst always ensuring the fulfilment of its Public Purposes and taking into account its other obligations in the Charter and the Agreement, the BBC must endeavour to minimise its negative competitive impacts on the wider market. This is a strict obligation on the BBC to take the steps that it deems appropriate in the given circumstances to achieve this outcome. The Competitive Impact Principle (“CIP”) applies to all Public Service Activities and when applying the CIP to any specific Public Service Activity, the BBC must take a proportionate approach to the assessment by paying particular attention to the size and scale of the activity concerned, including a consideration of its size relative to the size and scale of the market that is likely to be affected by the activity.
- d) Any Commercial Activities carried out by the BBC must fit with the BBC's Public Purpose Activities, exhibit commercial efficiency, not jeopardise the good reputation of the BBC or value of the BBC brand and comply with the Fair Trading Guidelines, in particular, by avoiding distorting the market.<sup>9</sup> They must also take into account the BBC's other obligations in the Charter and Agreement.
- e) The BBC should ensure that it preserves the brand and reputation of the BBC, both in the UK and overseas, in such a way that it appropriately maximises the value of the BBC to the Licence Fee Payer. An important aspect of this relates to how the BBC deals with other companies and individuals in connection with its brand. The BBC must consider carefully the identity of its trading partners, its use of its brand and the appropriate pricing for its brand.

The Agreement requires the Trust to distinguish (where possible) between those matters which (in its view) are the BBC's legal requirements and those which are not. In the Trust's view, principles a, b, d and e above are legal obligations, being requirements of competition law or the Charter and Agreement. Principle c is not a legal obligation in the Trust's view, but is a requirement imposed on the BBC Executive by the Trust.

The remainder of this section more fully explains each of the above fair trading principles and how conflicts between the fair trading principles should be handled.

### Requirements of Competition Law (including State Aid law)

The BBC's Trading Activities may be scrutinised under either UK, EU or other relevant national competition law. This section outlines the requirements of UK and EU competition only. It is not intended to be a statement of the law, or of the Trust's policy, but is for explanation purposes only.

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<sup>9</sup> Agreement, Section 69(1)(a), (b), (c) and (d)

In addition to the State Aid rules (see below) EU competition law comprises Article 101 of the Treaty on the Functioning of the European Union (which prohibits restrictive agreements affecting trade between EU member states) and Article 102 of the Treaty on the Functioning of the European Union (which prohibits dominant companies abusing their dominant position where this has an effect on trade between EU member states).

UK competition law mirrors the EU competition rules save for the requirement of an effect on trade between EU countries: the Competition Act 1998 contains a prohibition on restrictive agreements (the Chapter I Prohibition) and a prohibition on abuse of dominant position (the Chapter II Prohibition). The UK competition law regime also includes a criminal cartel offence, contained in the Enterprise Act 2002.

European State Aid law is contained in Articles 107-109 of the Treaty on the Functioning of the European Union which prohibits any aid granted through State resources in any form whatsoever which distorts competition by favouring certain firms or the production of certain goods.

The European Commission has issued an interpretative protocol on the system of public broadcasting and the European Commission's 2009 Communication on the application of State Aid rules to public service broadcasting and also the Transparency Directive to facilitate the application of the State Aid rules to companies that provide services in the public interest. #

The BBC is legally obliged to comply with competition law (including state aid law) requirements and the Trust requires it to do so. In the case of state aid law, the Trust acknowledges that the Department of Trade and Industry and the European Commission are also involved in the procedures required to achieve compliance with state aid law.

## Requirements regarding separation of the BBC's Public Service Activities and its Commercial Services

The BBC's Commercial Services should not receive from the BBC's Public Service Activities an advantage which is not available to its commercial competitors. Certain requirements in this context are placed on the BBC by rules derived from its obligations under EU law, such as State Aid law and the Transparency Directive. The requirements in this regard in the Charter and Agreement take those rules into account but extend the BBC's requirement beyond its strict State Aid obligations.

The BBC should ensure that there is:

- Financial, operational and structural<sup>10</sup> separation between the BBC's Public Service Activities and its Commercial Services.
- Transparency and accountability in the dealings between its Public Service Activities and its Commercial Services – this means transactions will be conducted on the basis of contracts (including service level agreements) for all services and goods supplied. Each commercial subsidiary publishes its own accounts and these are independently audited.
- Fair transfer pricing charged by the BBC's Public Service Activities to its Commercial Services and third parties for the use of Public Service Activity Inputs always taking into account the BBC's other obligations in the Charter and the Agreement such as ensuring value for money.

The Trust expects the BBC Executive to set out methods for assessing 'fair' in this context in its Guidelines, which are subject to approval by the Trust.

- No unfair promotion of Commercial Services through Public Service Activities (see also Part 3 of this document, the Trust's Code on Cross-Promotion).
- Explicit justification, accountability and normal market pricing for the use of Public Service spare capacity for Commercial Activities. The Trust defines 'spare capacity' to mean BBC Public Service Activity capacity which it is not possible to reorganise or eliminate within the BBC's Public Service Activity context. Spare capacity should only be used for Commercial Activities where:
  - financial and accounting separation is in place and sufficient detail and transparency on the financial arrangements is available.
  - there is confirmation that the public service output can still be delivered whilst using this spare capacity.

As a point of principle, the BBC Executive should not maintain or prolong spare capacity within the BBC's Public Service Activities in order to carry on its Commercial Activities.

The BBC must observe any undertakings in force given to a relevant authority about the relationship between the BBC's Public Service Activities and its Commercial Activities.

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<sup>10</sup> Agreement 68(2) Any commercial services must be provided through one or more commercial subsidiaries.

## Requirements of the CIP

### The Trust's CIP

In view of the BBC's receipt of public funding through the Licence Fee, 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 referred to above is known as the "Competitive Impact Principle" or CIP.

The BBC exists to serve the public interest and its main object is the promotion of the Public Purposes. It is implicit that the BBC is expected to operate across the range of media markets and not to confine its activities to areas of market failure; otherwise, the need to have regard to competitive impact would not be required in this form.

### Scope of the CIP

The CIP applies to all of the BBC's Public Service Activities in the UK and internationally. It does not apply to the BBC's Commercial Service Activities.

### Application of the CIP by the BBC Executive

The Trust regards the requirement that the BBC endeavour to minimise its negative competitive impacts on the wider market as a strict obligation, requiring the BBC to strive to take the appropriate steps in the given circumstances to achieve this outcome whilst always ensuring the fulfilment of the Public Purposes and other obligations.

When applying the CIP to any specific Public Service Activity, the BBC must take a proportionate approach to its assessment by paying particular attention to the size and scale of the activity concerned in the context of the relevant market, including a consideration of its size relative to the size and scale of the industry that is likely to be affected by the activity.

Where the BBC carries out Public Service Activities outside the UK – which generally means the activities of the World Service and also includes BBC Monitoring – the BBC should always pay due regard to the CIP. However, the Trust recognises that the CIP is to be applied proportionately, and that the BBC's position relative to others in the market will be different in different parts of the world.

When applying the CIP, the Trust requires the BBC to consider impacts on consumer welfare, consistent with competition law principles. Impacts on other market participants (such as suppliers, competitors and distributors) may also be considered and the BBC might ask what those impacts mean within the context of the BBC's assessment of impacts on consumer welfare.



The Trust requires the BBC to comply with competition law when carrying out any of its activities. Where those activities are carried out outside the UK this will mean complying with local laws as well as UK and EU laws, as applicable.

## Requirements regarding Commercial Activities

In addition to complying with competition law, the BBC's Commercial Activities are required to comply with the following four commercial criteria:

- fit with the BBC's Public Purpose Activities;
- exhibit commercial efficiency;
- do not jeopardise the good reputation of the BBC or the value of the BBC brand;
- comply with this policy and the Executive's Fair Trading Guidelines, in particular by avoiding distorting the market.

The Agreement specifies that a Commercial Activity is to be considered to fit with the BBC's Public Purpose Activities if it is appropriate to be carried on in association with the promotion of the Public Purposes; and it is connected, otherwise than merely in financial terms, with the ways in which the BBC promotes its Public Purposes.<sup>11</sup>

The Trust considers that Commercial Activities will fit with the BBC's Public Purpose Activities if they do not compromise the BBC's Public Service Activities or put at risk its ability to deliver its Public Purposes effectively. The requirement for a connection, otherwise than merely in financial terms with the ways in which the BBC promotes its Public Purposes should 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 commercial services (e.g. demonstrating that a proposed Commercial Activity is connected with a specific BBC channel, such as BBC Three) but the activity must link clearly with the way in which the BBC promotes its Public Purposes (for example, promoting innovative British content and talent aimed primarily at younger audiences).

In the Trust's view, BBC Commercial Activities should not be regarded as distorting the market where they are in compliance with competition law and have not been given an unfair commercial advantage which could unduly and negatively influence the market. The Trust considers that:

- In relation to BBC Commercial Services, if the BBC abides by the fair trading principles set out in this Statement of Policy on Fair Trading, and in particular,

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<sup>11</sup> Agreement, Clause 69(3)

the requirement not to use the Licence Fee or Grant-In-Aid to fund its Commercial Services, the BBC's Commercial Services will not distort the market because the BBC Commercial Services will not have been given an unfair commercial advantage.

- In relation to BBC Commercial Trading Activities, if the BBC abides by the principles set out in this Statement of Policy on Fair Trading and, in particular, the requirement that Public Service Activity Inputs must be provided by the BBC at fair transfer prices, always taking into account the BBC's obligations in the Charter and the Agreement to ensure value for money, the BBC's Commercial Trading Activities will not distort the market because the market will not be unduly and negatively influenced.

## Requirements relating to Brand and Reputation

The benefit that Licence Fee Payers obtain, and expect, from the BBC is directly tied to the value and reputation of the BBC brand. The Trust requires the Executive to preserve and enhance the brand and reputation of the BBC, both in the UK and overseas, in such a way that maximises the value of the BBC. This means the BBC should seek a fair price for the assets it has developed through the use of the Licence Fee; in particular, the BBC Executive should ensure that there is no cross-subsidy from the BBC to its Commercial Services.

The Trust expects the BBC to deal fairly and reasonably with all its stakeholders. The Trust wishes to encourage and enable responsible behaviour by the BBC Executive and avoid bringing the BBC brand into disrepute. The brand may be brought into disrepute, for example, by the BBC conducting deals with particular third parties or by how the BBC uses its brand. Equally, it is important that the brand is appropriately valued when dealing with other parties. Too low a value may diminish the BBC brand.

As a minimum, the Trust expects the Executive's Fair Trading Guidelines to include behavioural rules and procedures stipulating:

- a) who might be a desirable trading partner;
- b) how the brand is used;
- c) that the use of the brand must be appropriately priced.

The Guidelines should require transparent, objectively justifiable and proportionate criteria where appropriate in order to implement the above principles.

The Trust is of the view that these requirements are legal obligations in that they are derived from the Charter and the Agreement.

## Areas which potentially overlap with the Fair Trading framework

### BBC Editorial Guidelines

The Trust recognises that there may be overlap between the requirements contained within the Fair Trading framework and the BBC's Editorial Guidelines, which codify the BBC's values and editorial standards, regulatory framework and good practice to which all BBC services – both commercial and public service – should adhere<sup>12</sup>. Where this occurs, the Trust expects the Executive to exercise judgement as to how overlapping requirements are to be observed by the BBC, recognising that decisions will be made on a case-by-case basis.

Where appropriate, cross-references between the Executive's Fair Trading Guidelines and its Editorial Guidelines should be made to clarify areas of overlap, and should be reviewed regularly to ensure they are kept up to date.

### BBC Marketing & Audiences

The Trust will expect the Executive to ensure that the use of BBC brands is consistent with the advice of BBC Marketing & Audiences on what constitutes a BBC brand, on design issues and on how the BBC should deploy its brands to protect BBC brand equity. In the event of overlap between such advice and the requirements of the Fair Trading framework, the Trust expects the Executive to exercise judgement, with decisions being made on a case-by-case basis.

### Ofcom

Aspects of the BBC's output are subject to regulation by Ofcom under the Ofcom Broadcasting Code<sup>13</sup>. The Trust expects the Executive to comply with both the Broadcasting Code, to the extent that it applies to the BBC's activities, and the Fair Trading framework. In particular cases relating to the Ofcom Broadcasting Code, the BBC Executive should seek guidance from Ofcom.

### Public Procurement

The Trust notes that in addition to the requirements of the fair trading framework, the BBC is also subject to the EU public procurement regime which means that some of its supply contracts above a certain value must be put out to tender. Some services connected with broadcasting and which relate directly to programme material or broadcasting time are excluded from the EU public procurement regime.

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<sup>12</sup> Available at <http://www.bbc.co.uk/guidelines/editorialguidelines/>

<sup>13</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/broadcastingcode2011.pdf>

## Conflicts between Fair Trading requirements

The Trust recognises that there may be conflicts between the key fair trading principles set out above. For example, preserving the BBC's reputation or brand image may involve a refusal to supply or deal, which could result in an allegation that the BBC is not trading fairly. The Trust expects the Executive's Fair Trading Guidelines to establish a procedure which adequately evaluates all the various applicable principles and then permits the BBC Executive to form a view.

Where there is an overlap between fair trading and other relevant considerations (such as editorial issues, or value for money principles), the Trust will consider the matter through the most appropriate route or sub-committee it determines fit.

## Implementation of the fair trading framework

### Executive

The intention is that, in most cases, the Trust does not seek to monitor day-to-day compliance directly. Rather, it seeks to ensure that appropriate systems and structures are put in place to ensure compliance. The Trust expects the BBC Executive to implement the following measures:

#### Separation:

- a) Ensure that existing and any new Commercial Services operate on a transparent arm's length basis from the BBC's Public Service Activities, both operationally, financially and structurally;
- b) Achieve financial separation between the BBC World Service and the rest of the BBC's Public Service Activities;
- c) Create and maintain appropriate procedures to ensure that the BBC's Commercial Trading Activities charge fair prices for Public Service Activity Inputs.

#### Compliance:

- a) Adopt detailed Fair Trading Guidelines, which provide BBC staff with further guidance on how to apply the principles outlined in this document. The Fair Trading Guidelines must be approved by the Trust;
- b) Incorporate an appropriate compliance function to ensure that all parts of the BBC understand and implement the Fair Trading Guidelines and manage the BBC's fair trading risk profile;

- c) Adopt a system to monitor the effectiveness of the BBC's compliance with the BBC's Fair Trading framework, based upon a set of performance measures agreed with the Trust;
- d) Ensure the adoption of the Trust's Protocols in relation to fair trading, commercial services and quotas in the Fair Trading Guidelines and such other Protocols as the Trust may direct from time to time;
- e) Adopt, at Executive level, procedures designed to assess any material potential negative competitive impacts of the BBC's Public Service Activities. Materiality is an expression of the relative significance or importance of a particular matter in the context of the BBC's compliance with the CIP as a whole;
- f) Monitor the BBC's compliance with undertakings given to or orders by competition authorities and any conditions of approval imposed by those authorities or the Trust on new services and not captured in Service Licences.

#### Governance:

- a) Establish a committee or sub-committee with published terms of reference to monitor and assess the BBC's compliance with its obligations;
- b) Provide the Trust<sup>14</sup> with a regular report summarising Fair Trading activity and complaints received (without prejudicing the Trust in the event of an appeal).

The BBC Executive may delegate some of these duties as it sees fit, if it considers it appropriate to do so. However, at all times, the BBC Executive must remain accountable to the Trust for the activities of the BBC.

#### Trust

##### Reporting on the effectiveness of the Fair Trading framework

The Trust has final responsibility for ensuring compliance with all relevant statutory and regulatory requirements relating to Fair Trading. Each year, in the BBC's Annual Report and Accounts, the Trust will report on its view of the effectiveness of the BBC's Fair Trading Framework. The Trust will be informed by an independent fair trading audit undertaken by external auditors. The Trust approves the selection of the auditor and may choose to direct the auditors to report on specific areas of concern.

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<sup>14</sup> Or a Committee nominated for this purpose by the Trust

### Complaints and appeals

A Fair Trading complaint is a complaint that the BBC has breached the principles or requirements contained in the Fair Trading framework. Full guidance on the complaints and appeals process can be found in the BBC Fair Trading Complaints and Appeals Process.

Under the process, the BBC Executive is responsible in the first instance for considering all complaints unless agreed otherwise on a case-by-case basis. Complainants who are dissatisfied with the findings of the BBC Executive may appeal to the Trust. The Trust's Complaints and Appeals Board will hear appeals to the Trust which relate to Fair Trading. Where the Trust considers an alternative and more appropriate process is available, the matter may be dealt with under such process at the Trust's discretion.

### Sanctions and conditions

The Trust will decide on the sanctions to be imposed on the BBC Executive if it upholds an appeal regarding actions taken by the BBC Executive. Details of potential sanctions are contained in the complaints and appeals process guidance.

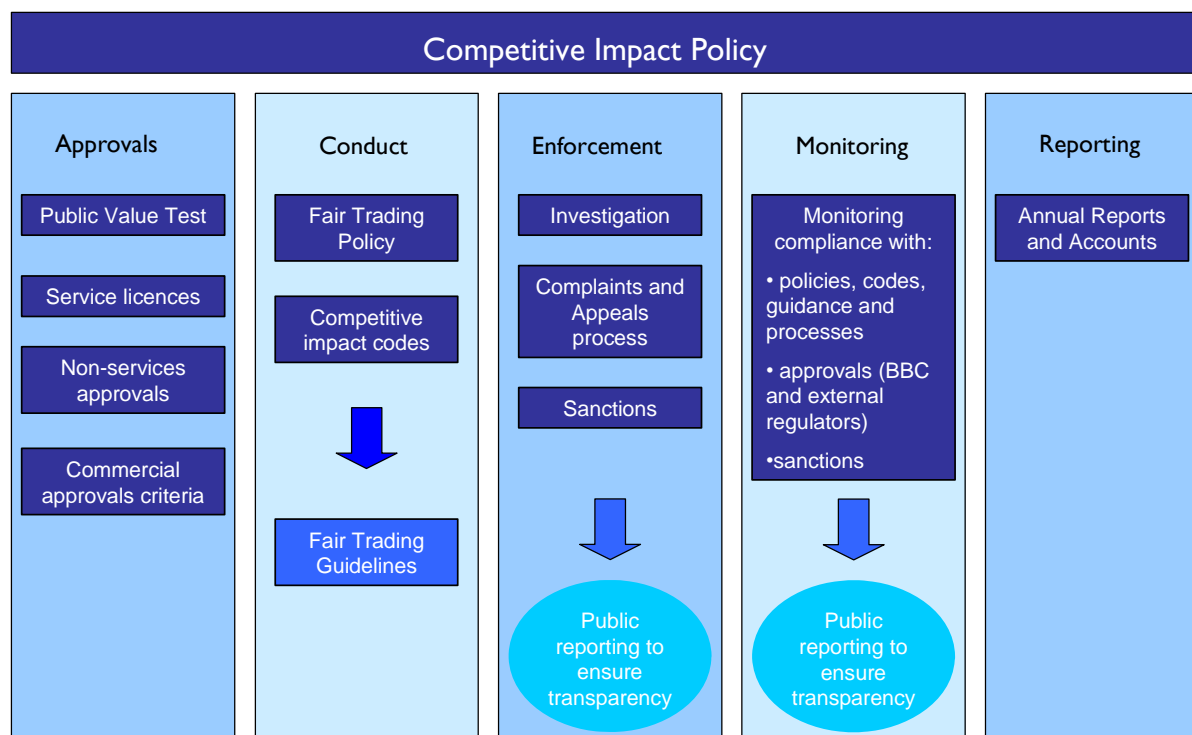
As appropriate, the Trust will monitor the behaviour of the BBC to ensure that it operates in line with the sanctions and conditions set in the appeal decision.

## Part 2: The Trust’s Competitive Impact framework

The Competitive Impact framework sets out how the Trust will take account of its duty to have regard to the competitive impact of the BBC’s activities on the wider market. The Competitive Impact framework is not a policy of the Trust, but sets out the policies, codes, guidance and processes which implement the Trust’s Competitive Impact Principle across the range of the BBC’s activities. Figure 1 below sets out the framework, which covers:

- Approvals for the BBC’s activities and significant changes to such activities;
- Operational conduct of the BBC;
- Enforcement (Trust investigations, complaints and appeals, sanctions);
- Monitoring
- Reporting

Figure 1: The Trust’s Competitive Impact framework



Whenever the Trust is assessing market impacts on others, it will consider impacts on consumer welfare, consistent with competition law principles. Impacts on other

market participants (such as suppliers, competitors and distributors) may also be considered and the Trust might consider what those impacts mean within the context of its assessment of impacts on consumer welfare.

The key aspects of each of the elements of the framework set out above, and how they take account of the Trust's duty in relation to the competitive impact of the BBC's activities on the wider market, are set out below.

## Approvals

Under the Charter, the Trust must set up an “*approvals framework within which the Trust will assess proposals from the Executive Board for new services, significant changes to existing services, commercial services and other activities*”<sup>15</sup>...which can include introducing a new service or discontinuing a service”<sup>16</sup>.

### UK Public Services

Proposals to make significant changes to the BBC's UK Public Services must undergo a Public Value Test (PVT).<sup>17</sup> The BBC Executive must refer proposals to the Trust where it concludes that changes may be significant.

It is for the Trust to determine whether changes are significant, and in doing so it may seek advice from Ofcom with regard to its view on likely competitive impact. The Trust is not restricted to considering only those potentially significant matters referred to it and may decide to assess the significance of changes not referred to it by the BBC Executive.

In carrying out a PVT, the Trust must consider a Public Value Assessment, and a Market Impact Assessment undertaken by Ofcom, and reach a conclusion about whether the proposed change should be made. Before concluding that such a proposed change should be made, the Trust must be satisfied that any likely adverse impact on the market is justified by the likely public value of the change.<sup>18</sup> The judgement that is taken in the PVT includes a consideration of the competitive impact of the BBC's activities on the wider market, as described below. This is a more detailed assessment than that required by the Trust's CIP. CIP assessments are carried out by the BBC Executive in relation to new or changed UK Public Service Activities whether or not they are brought to the Trust for approval prior to implementation.

Details of the PVT process can be found at:

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<sup>15</sup> Charter, Article 24(2)(l)

<sup>16</sup> Agreement, Clause 25(1)

<sup>17</sup> Agreement, Clause 23

<sup>18</sup> Agreement, Clause 26



[http://www.bbc.co.uk/bbctrust/our\\_work/new\\_services/](http://www.bbc.co.uk/bbctrust/our_work/new_services/)

Where a PVT is conducted, the Trust has regard to the competitive impact of the BBC's activities on the wider market through consideration of Ofcom's Market Impact Assessment ("MIA"). When carrying out an MIA, Ofcom will assess the impact on the potential relevant market(s) of proposals which are the subject of the PVT. Furthermore, no proposal assessed through the PVT procedure will be approved unless the Trust is satisfied, on the basis of independent legal advice, that it is in compliance with competition law.

### Service Licences

The BBC's UK Public Services must each have a service licence issued by the Trust. The service licence defines *"the scope of the service, its aims and objectives, its headline budget and, where appropriate, other important features, having regard to the needs of licence fee payers and others who may be affected"*.<sup>19</sup>

Details of service licences can be found at:

[http://www.bbc.co.uk/bbctrust/our\\_work/service\\_reviews/](http://www.bbc.co.uk/bbctrust/our_work/service_reviews/)

In applying the service licence framework, the Trust will have regard to the impact of the BBC UK Public Services on the wider market. This may involve the imposition of qualitative commitments and numeric conditions in service licences. Furthermore, no service licence will be approved or issued by the Trust if the Trust reasonably considers in its own view and/or on the basis of independent legal advice that operation of the service may not be in compliance with competition law.

### Other BBC Activities (Non-Services)

Non-Service Activities are defined in the BBC's Framework Agreement as *"those activities of the BBC which do not have the nature of a service and are therefore outside the scope of many of the formal requirements expressed in this Agreement"*<sup>20</sup>. Despite the above, the Trust must *"bear in mind that non-service activities may be significant and that they may raise issues of public value and have market implications"*<sup>21</sup>. It is the Trust's responsibility to ensure that *"the principles which underlie the treatment of services are, where relevant, applied to non-service activities in a way which the Trust considers appropriate to the circumstances"*.<sup>22</sup> In this way, the competitive impact of the BBC on the wider market will always be taken into account as appropriate when activities with the characteristics of a non-service are brought before the Trust.

The Trust may determine that a proposal for a new or changed non-service activity is significant and warrants the application of a PVT prior to the Trust determining if it

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<sup>19</sup> Agreement, Clause 17(1)

<sup>20</sup> Agreement, Clause 22(1)

<sup>21</sup> Agreement, Clause 22(2)

<sup>22</sup> Agreement, Clause 22(3)

should be approved. As mentioned above under UK Public Service Activities, the judgement that is taken in the PVT is a more detailed assessment than that required by the CIP. As with service activities, the Trust will, where it considers appropriate, seek Ofcom's view on potential competitive impact in the course of conducting a significance test in order to decide whether a PVT should be applied.

### Commercial Activities

As a general proposition, the BBC's Commercial Activities must:<sup>23</sup>

- a) fit with the BBC's Public Purpose activities;
- b) exhibit commercial efficiency;
- c) not jeopardise the good reputation of the BBC or the value of the BBC brand; and
- d) comply with the Executive's Fair Trading Guidelines and, in particular, avoid distorting the market.

The Trust's Statement of Policy on Competitive Impact and its Statement of Policy on Fair Trading explain when the Trust considers that a BBC Commercial Activity should be regarded as distorting a market.

The Trust has established a process by which certain BBC Executive proposals for new or significantly changed Commercial Services must be approved by the Trust. Details of the approvals process for Commercial Services can be found at:

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/protocols/2010/c4\\_commercial\\_services.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/protocols/2010/c4_commercial_services.pdf)

The Trust will not approve proposed changes to the BBC's Commercial Services if the Trust reasonably considers in its own view and/or on the basis of independent legal advice that operation of the service may not be in compliance with competition law or does not meet the four criteria set out above.

### Monitoring

The Trust has adopted a range of processes to help it discharge its responsibility to have regard to the BBC's competitive impact. This includes: monitoring of conditions imposed by the Trust and undertakings given to and orders of external regulators; and any sanctions imposed on the BBC. To assist the Trust in this purpose it has established a number of sub-committees, as outlined below:

- Audience and Performance Committee to assess the performance of the BBC's publicly funded services, including compliance with service licences.

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<sup>23</sup> Agreement, Clause 69(1)

- Strategic Approvals Committee to assist the Trust in considering proposals from the BBC Executive to launch new services or change existing ones. It oversees the Public Value Test process, and it oversees the BBC's commercial strategy.
- Complaints and Appeals Board (a committee of the BBC Trust) to assist the Trust in handling, hearing and determining certain complaints and appeals to the Trust. It is also responsible for certain strategic functions in relation to the BBC's procedures for handling such complaints and appeals, including monitoring the BBC's performance under those procedures.
- Joint PVT Steering Group in conjunction with Ofcom to assist the Trust to comply with its obligation under the Charter to conduct Public Value Tests on new or significant changes to the BBC's UK public services.

While it is not practical to summarise all of the processes involved here, in general terms sub-committees require the BBC Executive to establish its own monitoring arrangements and to regularly report to the Trust on compliance with requirements established by the Trust. The Trust will review this reporting, which may include ongoing monitoring as well as an annual statement of compliance. The Trust may also undertake its own reviews or investigations as it sees fit. Through the appropriate sub-committee the Trust is able to take appropriate steps if there has been non-compliance or an upheld appeal, for example requiring the activity to be suspended, or that changes must be made to the activity to ensure compliance.

Details of the Trust's sub-committees can be found at the following web address (note that details of the Trust's Complaints and Appeals Board will be available from December 2011 onwards):

[http://www.bbc.co.uk/bbctrust/about/how\\_we\\_operate/committees/](http://www.bbc.co.uk/bbctrust/about/how_we_operate/committees/)

The Trust has also established a range of Protocols, which set out the detailed framework within which the Trust carries out its functions, including describing the relationship between the Trust and the Executive Board and the separate responsibilities of the two bodies.

Details of the Trust's Protocols can be found at:

[http://www.bbc.co.uk/bbctrust/about/how\\_we\\_govern/charter\\_and\\_agreement/index.shtml](http://www.bbc.co.uk/bbctrust/about/how_we_govern/charter_and_agreement/index.shtml)

## Reporting

In line with the Trust's duty to ensure that the BBC observes high standards of openness and transparency,<sup>24</sup> the Trust will publicly communicate in an appropriate way the results of its monitoring activities.

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<sup>24</sup> Charter, Article 23(f)

# Part 3: The Trust's Competitive Impact Codes

## Introduction

Under the Charter, the BBC Trust must have regard to the competitive impact of the BBC's activities on the wider market.<sup>25</sup> As required by the Agreement, the Trust has adopted a Statement of Policy on the Competitive Impact of the BBC's activities on the wider market.

In relation to the BBC's Public Service Activities, including those which are not submitted to the Trust for approval, the cornerstone of the Policy is the Competitive Impact Principle ("CIP").

## Purpose of the Codes

The Trust must adopt and publish codes dealing with "those aspects of the operation of the UK Public Services that in its view could raise significant issues regarding the competitive impact of the BBC's activities"<sup>26</sup> ("the Codes").

The Codes apply to activity by the UK Public Services only. Such activity is also subject to the CIP. The purpose of the Codes is to provide the BBC Executive with guidance as to how it should apply the CIP to those aspects of the operation of its UK Public Services which, in the Trust's view, could raise significant issues regarding the competitive impact of the BBC's activities.

## Operation of the Codes

The Codes are intended to:

- provide clear principles and guidance to the BBC about how to conduct certain activities to prevent problems before they arise;
- provide an analytical framework within which behaviour can be evaluated;
- provide transparency as to how the BBC will deal with those activities;

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<sup>25</sup> Charter, Article 23(e)

<sup>26</sup> Agreement, Clause 66(2)

- ensure that the BBC Executive and Trust consider complaints and appeals respectively within the same framework. The Trust would expect to see evidence that the principles and any analytical framework of the Codes have been followed in any particular case in which they are relevant.

The Trust recognises that areas of judgement remain and it is not the aim of the Codes to prohibit specific forms of behaviour where this may unduly inhibit the BBC's activities, its duties as a public service broadcaster and its ability to take into account all relevant circumstances in applying the Statement of Policy on Competitive Impact.

The BBC Executive must adopt and publish guidelines on the application of the Codes within the Fair Trading Guidelines.<sup>27</sup> The guidelines provide a more detailed practical compliance guide for BBC personnel on the areas covered by the Codes.

## Selection of Specific Codes

In formulating its Codes, the Trust must have regard to *“the extent that the Trust considers them to be relevant, to any fair and effective competition codes issued by Ofcom for the purpose of applying to any description of broadcasters other than the BBC”* and *“to any views expressed by Ofcom as to matters that should be covered by the Trust’s codes”*. In addition, the Trust’s codes may *“deal with matters which are not covered by any fair and effective competition codes issued by Ofcom (and, of course, the duty to ‘have regard’ to any Ofcom codes does not mean that the Trust necessarily have to follow suit even where such codes are relevant)”*<sup>28</sup>

In this document, the Trust sets out its Code on Cross-Promotion. The Trust may publish further Codes in future.<sup>29</sup>

## Review of the Codes

The Trust will keep the Codes under review, and will, in any event, formally review each of them at least every three years, in light of the operation of relevant policies and guidelines within the Competitive Impact framework, legal developments, in particular in competition law, regulatory and market developments and anything else the Trust thinks may be relevant.

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<sup>27</sup> Agreement, Clause 67(1)(b)

<sup>28</sup> Agreement, Clause 66(3a), (3b) and (4)

<sup>29</sup> Agreement, Clause 66(2)

# Code on Cross-Promotion

## Scope of the Code

1. Cross-promotion, in the context of this Code, refers to the BBC's promotion, through its UK Public Services and related Public Service Activities, of other services and products including on-demand TV-like content.
2. Digital TV promotion refers to the BBC's promotion, through its UK Public Services and related Public Service Activities, of digital TV platforms and/or services.
3. Any cross-promotion by the BBC must be consistent with its privileged position as a publicly funded broadcaster and must comply with competition law (including state aid law).
4. In developing this Code, the Trust has made reference to Ofcom's Cross Promotion Code<sup>30</sup> and also Chapter 10 of Ofcom's Broadcasting Code ("Ofcom's Codes"). Ofcom's Codes outline principles for ensuring that cross-promotions on television are distinct from advertising and that promotions on television, including cross-promotions, do not prejudice fair and effective competition. Ofcom's Codes apply to television services regulated by Ofcom including, where relevant, the BBC's Commercial Services. They do not apply to BBC Public Service Activities. The spirit of Ofcom's Codes has been applied in this Code, with appropriate modifications to reflect the BBC's publicly funded status.

## Areas of potential concern

5. The Government has recognised that *"it is important that the BBC should continue to promote its services on-air so that licence fee payers are aware of specific programmes and the breadth of the BBC's overall offering"*.<sup>31</sup>
6. However, the Trust recognises that promotion of goods or services by the BBC's UK Public Services and related Public Service Activities could raise concerns about the competitive impact of the BBC's activities on the wider market, through the ability of promotions to direct consumers towards particular goods or services over others.

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<sup>30</sup> Ofcom Cross-promotion Code, published 10 July 2006.

<sup>31</sup> "A public service for all: the BBC in the digital age", Presented to Parliament by the Secretary of State for Culture, Media and Sport, March 2006, Page 36.

7. The Trust has identified the following three particular types of promotion through the BBC's UK Public Services and related Public Service Activities which could give rise to concerns:
  - a) the promotion by the BBC through its UK Public Services and related 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 programme or are relevant to the Public Purposes;
  - b) the promotion by the BBC through its UK Public Services and related Public Service Activities of its Other Commercial Services;
  - c) the promotion by the BBC through its UK Public Services and related Public Service Activities of particular digital platforms/ services.
8. The Trust takes the view that it is necessary for the BBC Executive to follow the principles outlined below when engaging in the above three types of promotion, in order to comply with the Competitive Impact Principle. Taking each type of promotion in turn:

## Cross-promotion of BBC Programme-Related Materials

9. BBC Programme-Related Materials may be trailed through the UK Public Services and related Public Service Activities.
10. BBC Programme-Related Materials in this Code refers only to products and services designed to earn a commercial return only and does not include non-profit making material intended to promote the Public Purposes (such as factsheets which may accompany BBC programmes).
11. In relation to such trailing, the following principles apply:
  - Any such trailing must comply with the terms of any cross-promotion undertakings granted to any regulatory authority. The BBC has given an undertaking to the Office of Fair Trading ("OFT") in relation to the trailing of BBC magazines<sup>32</sup> ("the OFT Undertaking").
  - Any trailing of BBC Programme-Related Materials through the UK Public Services and related Public Service Activities must be for clear editorial reasons or Public Purpose reasons, for example, to promote education and learning. The Trust expects such material to be directly related to and trailed alongside the relevant BBC programmes.

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<sup>32</sup> [http://www.of.gov.uk/shared\\_of/monopolies/televisionbroadcastingservices.p](http://www.of.gov.uk/shared_of/monopolies/televisionbroadcastingservices.p)



- Any statement or reference to availability of BBC Programme-Related Materials must comply with the Competitive Impact Principle, which the Trust will take to mean in this context that the BBC Executive should take an entirely non-discriminatory approach.
12. The BBC Executive must ensure that the nature and extent of any trailing is appropriate, given the above principles. The BBC Executive must include guidance in the Fair Trading Guidelines to ensure that the nature and extent of trailing not covered by the OFT Undertaking is appropriate. The guidance should cover:
- when such trailing is likely to be editorially justified or justified by Public Purpose reasons;
  - the type of BBC Programme-Related Materials that is appropriate to trail;
  - the positioning of such trails;
  - the style and content of such trails so as to ensure that the trail provides simple factual information about the nature of the BBC Programme-Related Materials and their release for sale;
  - the frequency of trails;
  - when statements or references to availability of BBC Programme-Related Materials will be regarded as having been made on a non-discriminatory basis as above.

### Cross-Promotion of BBC Programme-Related Materials – particular issues in the Online environment

13. The BBC has a specific Public Purpose which requires the BBC to deliver to the public the benefit of emerging communications technologies and services.<sup>33</sup> In doing so, the BBC has an important role to play as a trusted guide to the internet. In fulfilling this role, the BBC may provide links from its online UK Public Services (e.g. [bbc.co.uk](http://bbc.co.uk)) to External Websites. For example, a link in order to provide additional sources of information, source material or comment in relation to a programme or news item which will further the public value of BBC content.
14. It is inevitable that some External Websites to which the BBC's online UK Public Services link will offer goods and services for sale which are not BBC Programme-Related Materials. The BBC should only link to such External Websites where it is editorially justifiable to do so and should carefully consider to which page of those External Websites it is most appropriate to link.

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<sup>33</sup> Charter, Article 4

15. Notwithstanding the BBC's role in delivering its Public Purposes, the Trust recognises that although cross-promotion of BBC Programme-Related Materials from the BBC's online UK Public Services will be editorially justified in many instances, it could also raise competitive impact concerns, particularly in relation to the choice of External Websites which offer online purchase.
16. The Trust will permit the BBC to trail online BBC Programme-Related Materials through the BBC's online UK Public Services by linking to External Websites which offer online purchase of such BBC Programme-Related Materials (e.g. 'buy it now' links) subject to the following principles:
- All such links, whether to an External Website which forms part of the BBC's Commercial Services or a third party External Website, must be editorially justified or for Public Purpose reasons.
  - BBC Worldwide is the main commercial subsidiary of the BBC and has a First Option agreement under which it can negotiate to secure commercial rights to BBC content. In line with general market practice in the online environment, provided that the link is editorially justified or for Public Purpose reasons, it may be appropriate to link to BBC Worldwide External Websites, or the website of a third party which has been licensed to develop BBC Programme-Related Materials and offers online purchase of such materials. When linking to such External Websites, this should be done by also linking on a non-discriminatory basis to such other third party External Websites which offer online purchase of the BBC Programme-Related Materials.
  - It must be clear to the user, prior to leaving the BBC online UK Public Service in order to journey to an External Website offering BBC Programme-Related Material (including an External Website which forms part of the BBC's Commercial Services), that the user is now navigating to an External Website which is not part of the BBC's Public Service Activities.
17. The BBC Executive should implement the above principles in its Fair Trading Guidelines by giving guidance as to how they will be applied by the BBC. In particular, the guidelines should indicate when the BBC will be regarded as having linked to third party External Websites on a non-discriminatory basis.

## Cross-Promotion of the BBC's Commercial Services

18. The BBC should not promote the BBC's Commercial Services through its UK Public Services and related Public Service Activities unless there is a clear editorial justification for doing so. An example of where there might be editorial justification for doing so where there is an international series of

programmes on a particular issue in which both the BBC's UK Public Services and one of the BBC's Commercial Services are participating.

19. The BBC Executive's Fair Trading Guidelines should give guidance as to when there is clear editorial justification for promoting the BBC's Commercial Services through its UK Public Services and related Public Service Activities.

## Cross-Promotion of linear Digital Television

20. The BBC has a specific Public Purpose to help deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.
21. The BBC has an important role to play in this respect and has the potential to influence the penetration, uptake and usage of digital television. The Trust recognises the benefits that trailing can bring in promoting this Public Purpose.
22. However, the BBC could also have a potentially adverse impact on the market by favouring one platform or service over another when promoting digital television through its UK Public Services. Recognising this, the Trust requires the BBC Executive to deliver the Sixth Public Purpose in the most effective manner, whilst endeavouring to minimise potential negative competitive impacts on the wider market in line with the Competitive Impact Principle.
23. In particular:-
  - Promotions for digital television that refer to any 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 UK Public Services are available.
  - Promotions for digital television that refer to a digital retail television service, such as Freeview, must also name all other major services (for example Sky or Virgin) on which the BBC's UK Public Services are available.
  - Promotions for digital television must treat digital retail television services and/or digital platforms equally in respect of all aspects mentioned, such as pricing, brand names, availability and packages.
  - In determining whether to refer to other platforms or services, the BBC Executive must exercise its judgement, taking into account the most effective way to achieve the Public Purposes, whilst endeavouring to minimise potential negative competitive impacts on the wider market.

- The Trust currently considers a ‘major’ platform or service to be one which attracts a customer base of over 500,000 users. The BBC Executive is expected to monitor developments in the market, particularly around the growth of new platforms such as broadband television, and consider referring to other platforms/services below this limit where appropriate. Whilst the materiality threshold may not be met for any particular retail TV services available via the broadband platform, the Trust considers it appropriate to refer to broadband TV as a ‘major’ platform.
- If the need to refer to all platforms with a customer base of over 500,000 users means that the message would be unacceptably cluttered, the Trust will reconsider how the BBC should best meet these requirements.
- Given the greater capacity to promote platforms and services in the online environment, the BBC should provide on [bbc.co.uk](http://bbc.co.uk) a central list and details of the main digital TV platforms and services on which the BBC’s UK Public Services are available.

## Cross-Promotion of on-demand TV-like<sup>34</sup> content and services

24. The BBC considers that provision of BBC on-demand content and services indirectly promotes the Public Purposes by creating another way in which viewers can access BBC services. On-demand viewing is of increasing importance to Licence Fee payers and it is appropriate that the BBC should promote the ways in which viewers can access BBC services on-demand, including via the BBC iPlayer.
25. However, as with linear content, the BBC could have a potentially negative impact on the market by, for example, favouring one digital television platform or service that supports the BBC iPlayer or otherwise hosts BBC on-demand content over another through its UK Public Services. Accordingly, promotions appearing on linear BBC television for the BBC iPlayer and/or BBC on-demand content that refer to [bbc.co.uk](http://bbc.co.uk) should also make reference to the fact that this content is also available on other platforms and services.
26. In addition, given the greater capacity to promote platforms and services in the online environment, the BBC should provide on [bbc.co.uk](http://bbc.co.uk) a central list

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<sup>34</sup> “TV-like” is used as short hand in order to identify the type of content to which this policy is intended to apply. It is used in the same sense as section 368A (1) of the Communications Act 2003 and the recitals to the Audiovisual Media Services Directive so as to refer to on-demand audiovisual services “the form and content of which are comparable to the form and content of programmes normally included in television programme services”.

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

## Definitions

"Agreement" means the Framework Agreement concluded between the Secretary of State for Culture, Media and Sport and the BBC in July 2006.

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

"BBC World Service" involves 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 the Agreement.

"Charter" means the Royal Charter for the continuance of the BBC for the period ending on 31 December 2016 (as amended).

"Commercial Activities" means all 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 subsidiaries not primarily (or at all) in order to promote the Public Purposes, but with 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 in addition to the state aid rules (see below) Article 101 of the Treaty on the Functioning of the European Union (which prohibits restrictive agreements affecting trade between EU countries) and Article 102 of the Treaty on the Functioning of the European Union (which prohibits dominant companies abusing their dominant position where this has an effect on trade between EU countries). UK competition law mirrors the EU competition rules save for the requirement of an effect on trade between EU countries: the Competition Act 1998 contains a prohibition on restrictive agreements (the Chapter I Prohibition) and a prohibition on abuse of dominant position (the Chapter II Prohibition). The UK competition law regime also includes a criminal cartel offence, contained in the Enterprise Act 2002.

"Competitive Impact Framework" means the framework adopted by the Trust comprising the policies, codes, guidance and processes implementing the Competitive Impact Policy Statement.

"Competitive Impact Policy Statement" means the statement of policy on competitive impact adopted by the Trust under Clause 66(2) of the Agreement.

"Competitive Impact Principle" means the Competitive Impact Principle set out in the Trust's Competitive Impact Policy Statement.

"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.

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

"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.

"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.

"Ofcom" means the Office of Communications.

"Public Purposes" means the public purposes of the BBC as set out in Article 4 of the Charter.

"Public Service Activities" means all BBC activities carried out using public funding including publicly funded services and non-service activities, except the Commercial 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 107- 109 of the Treaty on the Functioning of the European Union.

"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.

"Transparency Directive" means European Directive 2004/109/EC of 15 December 2004 (as amended).

"Trust" means the BBC Trust established by Article 7 of the Charter.

"UK Public Services" means the services provided by the BBC as defined in Section 100 of the Agreement.

## **Document history**

The Trust's fair trading policies and the code on cross-promotion were first published in June 2007. As a result of the Trust's fair trading policy review published in November 2011, the previously separate policies and codes were combined into this single document published at the same time.