

## **The BBC's Fair Trading Commitment – Note by the BBC**

### **Introduction**

Because of its special position as a publicly funded institution, the BBC has acknowledged its obligations to its audience, customers and competitors. The BBC Governors' Fair Trading Commitment explains how the BBC will meet these important obligations when participating in commercial activity.

The practical application of the Fair Trading Commitment is set out in the BBC's Fair Trading Guidelines (Guidelines). The Guidelines apply to all parts of the BBC – including both core public service and any commercial subsidiaries – when engaging in commercial activity. These Guidelines were subject to a full review during 2003/04 and a revised set of Guidelines was implemented with effect from 1 April 2004.

### **The BBC's Fair Trading Guidelines**

The BBC's core purpose is public service broadcasting, seeking to satisfy audiences with services that inform, educate and entertain and that enrich their lives in ways the market alone will not. The BBC therefore has a special responsibility to ensure that any commercial activity it undertakes supplements and supports, and does not conflict with, its fundamental public purpose. The Guidelines set out the further principles that govern the BBC's approach to commercial activities. These principles are that:

- there should be clear separation between publicly-funded and commercial activities in terms of their operation and accounting;
- commercial activities must pay fair charges for any goods and services (including rights) received from the BBC's publicly-funded services;
- all BBC commercial activities must charge fair prices for any goods and services (including rights) they supply;
- no public funds must be used, or put at risk, by commercial activities;
- the BBC's publicly-funded services may not be used unfairly to promote the BBC's commercial activities; and
- all of the BBC's activities must comply with European and UK Competition Law, and European Law on State Aid.
- the reputation of the BBC must not be undermined.

The Guidelines set out the framework that ensures that the BBC's commercial activities support its public purpose, that the BBC trades fairly and that the BBC lives up to the high standards that the BBC has set over the years.

The Guidelines also describe how the BBC publicly funded services should charge fair prices for the inputs provided to commercial activities, including those of the BBC's commercial subsidiaries. It requires charges to cover at least the incremental cost incurred in supplying the goods or service to

commercial activities. It also requires a reasonable contribution to overheads and to the long-term replacement costs of any shared assets.

This methodology is consistent with EC competition law jurisprudence and the Competition Act 1998 Guidelines issued by the OFT. It also serves to avoid cross-subsidy from public funds.

The Guidelines also set out the process by which Fair Trading issues are managed and monitored.

### **The BBC's Fair Trading Structure**

The BBC's Board of Governors has established a sub-committee, the Fair Trading Compliance Committee (FTCC), with specific responsibility for overseeing the BBC's compliance with its Fair Trading Commitment. The FTCC, which meets quarterly, comprises four members and has traditionally been chaired by the BBC Vice Chairman. The FTCC has access to specialist independent advice at its meetings from representatives of the BBC's independent Fair Trading auditors. In addition to the members of the Committee and the Fair Trading auditors, the FTCC meetings are attended by other senior people including the BBC's Director of Policy & Legal, General Counsel, Head of Fair Trading and Head of Business Assurance.

The FTCC discusses a wide range of fair trading matters. Reports are presented to the Committee on relevant activities within the BBC including specific projects and proposals which may have FT implications and their compatibility with the Fair Trading Commitment and the Guidelines. Reports are also received from the BBC's Head of Business Insurance and the external Fair Trading auditors. In addition, the Committee receives and considers reports on specific Fair Trading complaints to the BBC.

The BBC's Fair Trading auditors are appointed by and report directly to the Governors. They provide Fair Trading advice directly to the Committee, independently of management. The Corporation engages separate Fair Trading auditors to its financial auditors to ensure proper separation and independence in line with recommendations made during the most recent licence fee review. They undertake an annual review of the BBC's Fair Trading infrastructure and present their report to the FTCC. Their opinion is published in the BBC's Annual Report. The BBC's Fair Trading systems have been accredited with the ISO 9001:2000 standard, reviewed by independent assessors on a six-monthly basis.

The BBC's Head of Fair Trading (whose role is set out in this paper and explained in greater detail in the Guidelines) advises the FTCC. Where appropriate, he takes independent advice from external advisers before reporting and making recommendations to the FTCC. The Head of Fair Trading reports in to the Director of Policy & Legal but is able to raise matters directly with the Governors (independently of management) if he believes it necessary. All subsidiaries and commercial operations within the BBC report to the FTCC through the Head of Fair Trading on a quarterly basis.

Each divisional Board within the BBC has responsibility for ensuring compliance with the Guidelines. Each division must appoint a Fair Trading Representative with specific responsibility for fair trading matters, and is required to meet the Head of Fair Trading at least every six months. Each division is required to submit a quarterly return, approved and signed-off by the divisional director (or equivalent) setting out the key Fair Trading issues for the previous quarter, details of significant new commercial activities, details of any external challenges received from third parties and details of the Fair Trading undertaken in the division. Each division must also publish and maintain Fair Trading procedures which must ensure compliance with the Guidelines and the requirements of the ISO 9001:2000 accreditation. It should also provide for training, a proper referral and approval process and the maintenance of proper records.

### **Dealing with Complaints**

Complaints to the BBC about potential breaches of the Guidelines (or of UK or EU competition law) are fully investigated by the Head of Fair Trading. The investigation will review the allegations; make enquiries into the alleged breaches; seek reports from the part(s) of the BBC subject of the allegations; meet relevant senior BBC staff to establish and challenge their position(s); and, where necessary, seek input from external advisers to provide independent/expert advice.

All external Fair Trading challenges are the subject of a report which is presented to the FTCC. The Committee is able to probe and challenge the approach and conclusions of the Head of Fair Trading's investigation, with input from the Fair Trading auditors if required. The Committee publishes its considerations in the quarterly Fair Trading Bulletin. A summary of external challenges is also published in the BBC's Annual Report.