

## **COMPETITION COMMISSION FRAMEWORK DOCUMENT**

This framework document has been drawn up by the Department for Business, Innovation and Skills (BIS) in consultation with the Competition Commission (CC). This document, together with the Competition Commission's Financial Memorandum, sets out the broad framework within which the CC will operate. The document does not convey any legal powers or responsibilities. It is signed and dated by the Department and the CC. Copies of the document and any subsequent amendments will be placed in the Libraries of both Houses of Parliament and made available to members of the public on the CC website.

### **1. PURPOSE OF THE COMPETITION COMMISSION**

1.1 Under the Competition Act 1998 as amended by the Enterprise Act 2002, the CC's role is to carry out in-depth inquiries into mergers, markets and aspects of the regulation of the major regulated industries (including utilities, postal services, railways, airports, air traffic control and financial services). In doing this it also supports the strategic aims and current objectives of BIS and other interested departments including Her Majesty's Treasury (HMT).

1.2 Its statutory duties, powers and functions are set out in the following acts:

- Competition Act 1980
- Airports Act 1986
- Gas Act 1986
- Electricity Act 1989
- Water Industry Act 1991
- Electricity (Northern Ireland) Order 1992
- Railways Act 1993
- Airports (Northern Ireland) Order 1994
- Gas (Northern Ireland) Order 1996
- Competition Act 1998
- Postal Services Act 2000
- Transport Act 2000
- Financial Services and Markets Act 2000
- Enterprise Act 2002
- Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003
- Communications Act 2003
- Energy Act 2004

- Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005
- Electricity and Gas Appeals (Designation and Exclusion) Order 2005
- Legal Services Act 2007
- The Water and Sewerage Services (Northern Ireland) Order 2006

1.3 The CC aims to be one of the world's best competition authorities based on the quality of its analysis and the effectiveness of its remedies, and it seeks to make a strong contribution to the development of competition policy, both in the UK and internationally. It also aims to ensure that in economically turbulent times, markets continue to work effectively and that the CC's work places no undue burden to business or consumers. To help it achieve this aim, the CC agrees a number of core objectives and key performance indicators each year with BIS.

## **2. GOVERNANCE AND ACCOUNTABILITY**

### **Legal origins of powers and duties**

2.1 The CC's main powers and duties stem from section 45 and Schedule 7 of the Competition Act 1998, as amended by the Enterprise Act 2002, and separately Parts 3 and 4 of the Enterprise Act. It also has powers and duties under several other pieces of legislation as listed in 1.2.

### **Composition of the Council**

2.2 In line with the Government's Code of Practice on Corporate Governance and Schedule 7 of the Competition Act 1998, as amended by the Enterprise Act 2002, the Council will consist of a Chairman, Deputy Chairmen, and the Chief Executive together with Members appointed by the minister. Executive Members of the CC's staff must attend as necessary. Including the executive staff, the Council must have a balance of skills and experience appropriate to directing the CC's business, including competition economics, competition law, strategic management and oversight, operational delivery, and business/public sector administration. The independent non-executive Members appointed by the minister are there to ensure that executive Members are supported and constructively challenged in their role.

### **Overarching principles**

- 2.3 The Government has agreed that the CC must carry out its statutory duties independently, impartially and fairly. Additionally the CC must:
- i. observe the highest standards of propriety involving impartiality, integrity and objectivity in relation to the stewardship of public money;
  - ii. maximise value for money through ensuring that services are delivered in the most economical, efficient and effective way, within available resources;
  - iii. be accountable to Parliament, users of services, individual citizens and staff for the activities of the CC, its stewardship of public funds and the extent to which key performance targets and objectives have been met; and
  - iv. comply with Government policies on openness and responsiveness.

### ***Council appointments - the Chairman and Council Members***

- 2.4 The CC's Chairman and Council Members are appointed for a period of up to eight years by the responsible minister. Such appointments will comply with the Code of Practice of the Office of the Commissioner of Public Appointments and Schedule 7 of the Competition Act 1998, as amended by the Enterprise Act 2002.

### ***Council appointments – the Chief Executive***

- 2.5 The Chief Executive, formally known as the Secretary, is appointed by the responsible minister in consultation with the Chairman. The Chief Executive is the Accounting Officer for the CC. His/her role is described in Part 3 below.

### **Audit Committee**

- 2.6. The CC must have an Audit Committee which is a committee of the Council. The Audit Committee consists of at least two non-executive Council Members and two or more part-time CC Members. It is chaired by a non-executive Council Member, who is not the Chairman, and who has experience of financial matters. The responsibilities of the Audit Committee overlap with those of the Accounting Officer. It is envisaged that the Accounting Officer will normally attend all meetings of the Audit Committee, unless, exceptionally, his or her own performance is being discussed.

### **Remuneration Committee**

- 2.7 The CC must have a Remuneration Committee which is a committee of the Council. The Remuneration Committee consists of two non-executive Council Members, the Chairman of the CC and one of the CC's Deputy Chairmen. It is chaired by a non-executive Council Member. The Remuneration Committee has responsibility for monitoring the

performance of the Chief Executive and other senior staff and for assessing performance-related payments and bonuses to senior staff. The Remuneration Committee must ensure that it has access to the information and advice required to make the necessary judgements.

### **Ministerial responsibility**

- 2.8 The appropriate BIS minister will account for the CC's business in Parliament.

### **BIS's Principal Accounting Officer's specific accountabilities and responsibilities**

- 2.9 BIS's Principal Accounting Officer (PAO) has designated the Chief Executive of the CC, formally known as the Secretary, as the CC's Accounting Officer. (The respective responsibilities of the PAO and Accounting Officers for NDPBs and other arm's length bodies are set out in Chapter 3 of Managing Public Money which is sent separately to the NDPB Accounting Officer on appointment).

- 2.10 BIS's PAO is accountable to Parliament for the issue of any grant-in-aid to the CC. The PAO is also responsible for advising the responsible minister:

- on an appropriate framework of objectives and targets for the CC in the light of the CC's statutory duties, the Department's wider strategic aims and current objectives;
- on an appropriate budget for the CC in the light of the sponsor Department's overall public expenditure priorities and the CC's workload (including any fluctuations during an individual accounting year); and
- how well the CC is achieving its strategic objectives and whether it is delivering value for money.

- 2.11 BIS's PAO is also responsible for ensuring arrangements are in place in order to:

- monitor the CC's activities on a continuous basis;
- address significant problems in the CC, making such interventions as are judged necessary;
- periodically carry out an assessment of the risks both to the Department and the CC's objectives and activities;
- inform the CC of relevant government policy in a timely manner; and
- bring concerns about the activities of the CC to the CC's Council, requiring explanations and assurances that appropriate action has been taken.

- 2.12 The sponsor team in Consumer and Competition Policy Directorate in BIS is the primary contact for the CC. They are the main source of advice to the responsible minister on the

discharge of his or her responsibilities in respect of the CC. They also support BIS's PAO on his or her responsibilities toward the CC.

- 2.13 The CC, however, remains independent as regards any decisions or judgements made in relation to its inquiry and remedies work where it operates independently from both ministers and BIS in accordance with its statutory duties, powers and functions under the relevant legislation listed in paragraph 1.2.

#### **Annual Report and Accounts**

- 2.14 The CC must publish an annual report of its activities together with its audited accounts after the end of each financial year. The CC must provide the Department its finalised (audited) accounts within prescribed timescales.

#### **Internal audit**

- 2.15 The Chairman must:
- set up an Audit Committee of the Council in accordance with the Cabinet Office's Guidance on Code of Practice for Public Bodies and the Audit Committee Handbook.
- 2.16 The Chief Executive must:
- establish and maintain arrangements for internal audit in accordance with the Treasury's Government Internal Audit Standards (GIAS);
  - ensure BIS is satisfied with the competence and qualifications of the Head of Internal Audit (or outsourced equivalent) and the requirements for approving appointments in accordance with GIAS;
  - forward the audit strategy, periodic audit plans and annual audit report, including the CC's Head of Internal Audit opinion on risk management, control and governance as soon as possible to BIS; and
  - keep records of, and prepare and forward to BIS an annual report on fraud and theft suffered by the CC and notify BIS of any unusual or major incidents as soon as possible.
- 2.17 BIS's internal audit service has a right of access to all documents prepared by the CC's internal auditor, including where the service is contracted out.

#### **External audit**

- 2.18 The Comptroller & Auditor General (C&AG) audits the CC's annual accounts and lays them before Parliament, together with his report.

2.19 The C&AG:

- will consult BIS and the CC on who – the NAO or a commercial auditor – must undertake the audit(s) on his behalf, though the final decision rests with the C&AG;
- has a statutory right of access to relevant documents, including by virtue of section 25(8) of the Government Resources and Accounts Act 2000, held by another party in receipt of payments or grants from the CC;
- will share with BIS information identified during the audit process and the audit report (together with any other outputs) at the end of the audit, in particular on issues impacting on the Department's responsibilities in relation to financial systems within the CC; and
- will, where asked, provide departments and other relevant bodies with Regulatory Compliance Reports and other similar reports which departments may request at the commencement of the audit and which are compatible with the independent auditor's role.

2.20 The C&AG may carry out examinations into the economy, efficiency and effectiveness with which the CC has used its resources in discharging its functions. For the purpose of these examinations the C&AG has statutory access to documents as provided for under section 8 of the National Audit Act 1983. In addition, the CC must provide, in conditions to grants and contracts, for the C&AG to exercise such access to documents held by grant recipients and contractors and sub-contractors as may be required for these examinations; and must use its best endeavours to secure access for the C&AG to any other documents required by the C&AG which are held by other bodies.

**Right of access**

2.21 The Department has the right of access to all the CC's records and personnel for any purpose including, for example, sponsorship audits and operational investigations. BIS however does not have the right to access records or personnel in relation to an individual inquiry.

**3 RESPONSIBILITIES OF THE CHIEF EXECUTIVE AS COMPETITION COMMISSION'S ACCOUNTING OFFICER AND SECRETARY TO THE COMPETITION COMMISSION**

**General**

3.1 The Chief Executive as Accounting Officer is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety and regularity in the

handling of those public funds; and for the day-to-day operations and management of the CC. In addition, he or she must ensure that the CC as a whole is run on the basis of the standards, in terms of governance, decision-making in relation to the day to day management and financial management of the CC that that are set out in Box 3.1 to Managing Public Money (reproduced below).

**Box 3.1: standards expected of the Accounting Officer's organisation**

*Acting within the authority of the minister(s) to whom he or she is responsible, the Accounting Officer should ensure that the organisation, and any subsidiary to it or organisation sponsored by it, operates effectively and to a high standard of probity. The organisation should:*

**Governance**

- *have a governance structure which transmits, delegates, implements and enforces decisions*
- *have trustworthy internal controls to safeguard, channel and record resources as intended*
- *operate with propriety and regularity in all its transactions*
- *treat its customers and business counterparties fairly and honestly*
- *offer redress for failure to meet agreed customer standards where appropriate*
- *give timely, transparent and realistic accounts of its business, underpinning public confidence;*

**Decision-making**

- *support its ministers with clear, well reasoned, timely and impartial advice*
- *make all its decisions in line with the strategy, aims and objectives of the organisation set by ministers and/or in legislation*
- *meet the Treasury's requirements about limits on use of public resources*
- *manage its staff fairly, with inclusive policies designed to promote and integrate diversity and communicate its decisions openly and transparently;*

**Financial management**

- *use its resources efficiently, economically and effectively, avoiding waste and extravagance*
- *carry out procurement and project appraisal objectively and fairly, seeking good value for the public sector as a whole*
- *use management information systems to secure assurance about value for money and the quality of delivery and so make timely adjustments*
- *avoid over defining detail and imposing undue compliance costs, either on its own staff or on its customers and stakeholders*
- *have practical documented arrangements for working in partnership with other organisations*
- *use internal and external audit to improve its internal controls and performance.*

### **Responsibilities for accounting to Parliament**

3.2 The accountabilities include:

- signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Secretary of State;
- signing a Statement of Accounting Officer's Responsibilities, for inclusion in the annual report and accounts;
- signing a Statement on Internal Control regarding the system of internal control, for inclusion in the annual report and accounts;
- ensuring that effective procedures for handling complaints about the CC are established and made widely known within the CC;
- acting in accordance with the terms of this document, Managing Public Money and other instructions and guidance issued from time to time by BIS, the Treasury and the Cabinet Office; and
- giving evidence, normally with the PAO of BIS, when summoned before the Public Accounts Committee (PAC), on the CC's stewardship of public funds.

### **Responsibilities to BIS**

3.3 Particular responsibilities to BIS include:

- ensuring that the CC meets quarterly with BIS;
- establishing, in agreement with the Department, the CC's corporate and business plans in the light of BIS's (and other relevant government departments') wider strategic aims and current objectives;
- informing BIS of progress in helping to achieve the Department's policy objectives and demonstrating how resources are being used to achieve those objectives;
- ensuring that timely forecasts and monitoring information on performance and finance are provided to BIS;
- ensuring that the Department is notified promptly if over or under spends are likely and that appropriate corrective action is taken; and
- ensuring that any significant problems, whether financial, risk related or otherwise, and whether detected by internal audit or by other means, are notified to BIS in a timely fashion.

## Responsibilities to the Council

3.4 The Chief Executive is responsible for:

- advising the Council on the discharge of the CC's responsibilities as set out in this document, in the founding legislation and in any other relevant instructions and guidance that may be issued from time to time;
- advising the Council on the CC's performance compared with its aim[s] and objectives;
- ensuring that financial considerations are taken fully into account by the Council at all stages in reaching and executing its decisions, and that financial appraisal techniques are followed;
- discharging the obligations of the CC in relation to staff outlined in section 9 (Competition Commission Staff) of this document; and
- taking action as set out in guidance in Managing Public Money if the Council, or its Chairman, is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, is of questionable feasibility, or is unethical. The guidance is reproduced below.

*Moreover, if the Chair [of the CC or the Council] is minded to instruct the Accounting Officer to carry out some course which appears inconsistent with the standards in box 3.1, then the Accounting Officer should make his or her reservations clear, preferably in writing. If the board is minded nevertheless to proceed, the Accounting Officer should then:*

- *ask the Accounting Officer of the sponsor Department to consider intervening to resolve the difference of view, preferably in writing;*
- *if the board's decision stands, seek its written direction to carry it out, asking the sponsor Department to inform the Treasury;*
- *proceed to implement without delay; and*
- *inform the C&AG of what has happened.*

## 4. THE CHAIRMAN'S PERSONAL RESPONSIBILITIES

4.1 The Chairman is appointed by the Secretary of State for a period of up to eight years. The appointment is made in accordance with guidance issued by the Commissioner for Public Appointments. Her/His remuneration is determined by the Secretary of State.

4.2 The Chairman is responsible to the named minister. Communications between the CC's Council and the responsible minister must normally be through the Chairman. He or she

is responsible for ensuring that policies and actions comply with statutory requirements and, whilst recognising and maintaining the CC's independence in decision taking, support the responsible minister's and where relevant other ministers' wider strategic policies and that its affairs are conducted with probity. Where appropriate, these policies and actions must be clearly communicated and disseminated throughout the CC.

4.3 In addition, the Chairman has the following leadership responsibilities:

- in the formulation of the CC's strategy, including ensuring the CC's independence in the exercise of its statutory functions;
- ensuring that the CC is recognised as having high integrity and independence of view;
- ensuring the Council's strategic direction reflects the vision for the CC as a world-class competition authority as set out in the White Paper on Competition;
- ensuring the views of the CC are properly represented to the public on the basis of a policy of appropriate transparency agreed with the Council;
- ensuring all members of the Council engage in regular and collective consideration of issues and that the Council operates effectively at a high strategic level;
- ensuring the formulation of, and assisting the Council to formulate, appropriate strategies as required;
- ensuring that the Council, in reaching decisions, takes proper account of guidance provided by the responsible minister or BIS;
- encouraging high standards of propriety and promoting the efficient and effective use of staff and other resources throughout the organisation;
- ensuring that the CC achieves a high and consistent standard in its decision making;
- delivering high standards of regularity and propriety;
- liaises with the Secretary of State, the Office of Fair Trading and industry regulators to facilitate the efficient operation of regulatory processes; and
- representing the views of the Council and the CC to the general public.

4.4 The Chairman also has an obligation in relation to the Council to ensure that:

- the work of the Council and its Members is reviewed and that they are working effectively;
- the Council has a balance of skills appropriate to directing the CC's business, as set out in the Government Code of Good Practice on Corporate Governance;
- Council Members are fully briefed on terms of appointment, duties, rights and responsibilities;

- he or she, together with the other Council Members, receives appropriate training on financial management and reporting requirements and on any differences that may exist between private and public sector practice;
- performance objectives are set for the Chief Executive which take into account the objectives of the CC and the proper management, use and utilization of public resources;
- the responsible minister is advised of the CC's needs when Council vacancies arise;
- he or she assesses the performance of individual Council Members when they are being considered for re-appointment; and
- there is a code of practice for Council Members in place consistent with the Cabinet Office Model Code.

4.5 The Chairman also has an obligation in relation to Members to ensure that:

- all Reporting Panel and Specialist Panel Members of the CC, when taking up office, are fully briefed on the terms of their appointment and on their duties, rights and responsibilities and receive appropriate induction training; and, when vacancies arise, advice is provided to the Secretary of State on the needs of the CC;
- that a Code of Practice for Reporting and Specialist Panel and Council Members is in place based on the model Code of Practice for Board Members of Public Bodies produced by the Cabinet Office. The Code must commit the Chairman and other Members to the Nolan seven principles of public life, and must include a requirement for a comprehensive and publicly available register of Members' interests;
- (with the Chief Executive) there is up to date guidance on conflicts of interest for Members of the CC, which he/she will operate jointly with the Chief Executive in respect of Members' specific conflicts of interest; and
- he or she assesses the performance of individual Reporting and Specialist Panel Members.

4.6 The Chairman must set up a Remuneration Committee and an Audit Committee, each of which are chaired by an independent non-executive Member to provide independent advice.

## 5 THE COMPETITION COMMISSION COUNCIL

- 5.1 As provided by Schedule 7 to the 1998 Competition Act, the Council is composed of the Chairman and the Chief Executive of the CC, appointed persons and such other Members as the Secretary of State may appoint.
- 5.2 Aside from certain specific statutory functions, the Council is the CC's strategic board and is responsible for ensuring the efficient discharge of the CC's statutory functions and that the CC complies with any statutory or administrative requirements for the use of public funds. The functions of the Council are defined in paragraph 5 of Schedule 7 to the 1998 Competition Act.
- 5.3 The Council must ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The Council is expected to assure itself of the effectiveness of the internal control and risk management systems.
- 5.4 The Council is specifically responsible for establishing and taking forward the strategic aims and objectives of the CC consistent with its enabling legislation, overall strategic direction and within the policy and resources framework determined by the Secretary of State and with that in mind:
- ensures that the responsible minister is kept informed of any changes which are likely to impact on the strategic direction of the CC or on the attainability of its targets, and determining the steps needed to deal with such changes;
  - ensures that any statutory or administrative requirements for the use of public funds are complied with; that the Council operates within the limits of its statutory authority and any delegated authority agreed with BIS, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the Council takes into account guidance issued by BIS;
  - has oversight of the production of the business plan;
  - ensures that the Council receives and reviews regular financial information concerning the management of the CC; is informed in a timely manner of any concerns about the activities of the CC; and provides positive assurance to BIS that appropriate action has been taken on such concerns;
  - demonstrates high standards of corporate governance at all times, including by using the independent Audit Committee to help the Council to address key financial and other risks;

- ensures that section 9 (Competition Commission Staff) of this framework is implemented;
- formulates a strategy for ensuring full compliance with the Freedom of Information Act; and
- ensures that the CC formulates a strategy to ensure it manages its estate sustainably and in line with the Government's Framework for Sustainable Development on the Government Estate.

### **Statutory duties**

5.5 The Council has a statutory duty to oversee the production of the CC's Annual Report and Accounts (as a single document) to the Secretary of State and to Parliament on behalf of the CC within prescribed timescales.

5.6 The Report must:

- cover any corporate, subsidiary or joint ventures under its control;
- comply with the Treasury's Executive Non-departmental Public Bodies: Annual Report and Accounts Guidance;
- outline main activities and performance during the previous financial year and set out in summary form forward plans;
- include information on performance against key financial targets in the notes to the accounts;
- state the extent to which key strategic objectives and agreed financial and other performance targets have been met;
- list the names of the current Council Members, CC Members and senior staff;
- provide details of remuneration of Council Members and senior staff in accordance with Treasury guidance;
- contain information on access to the CC's register of interests;
- be submitted to BIS two weeks before the proposed publication date;
- be prepared in accordance with the relevant statutes and specific accounts direction issued by the Department as well as the Government Financial Reporting Manual (FReM); and
- be publicised on the CC website and through a press notice.

Information on performance against key financial targets is within the scope of the audit and must be included in the notes to the accounts. The Annual Report and Accounts must be laid in Parliament and made available on the CC's website within agreed timescales.

5.7 The Council also has the following statutory duties:

- publish general advice and information about the consideration by the CC of merger and market references and in relation to any matter connected with the exercise of its functions;
- approve the CC's overall staffing complement and ensure that the CC obtains BIS approval in terms of overall numbers and any non statutory changes to the terms and conditions offered to staff; and
- prepare and publish a statement of policy on penalties for non-provision of information.

#### **Individual Council Members' responsibilities**

5.8 Individual Council Members must:

- comply at all times with the Council Members' Code of Practice and with the rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- comply with the CC's rules on the acceptance of gifts and hospitality, and of business appointments; and
- act in good faith and in the best interests of the CC.

## **6. REPORTING AND SPECIALIST PANEL MEMBERS**

6.1 The role and duties of the Members of the CC are set out in Schedule 7 to the 1998 Competition Act, in the 'Code of Practice for Reporting Panel Members and Specialist Panel Members' and in 'Guidance on Conflicts of Interest' or such other replacement documents as may be in place from time to time.

6.2 The CC will maintain on its website a Register of Interests. The guidance note for Members on Conflicts of Interests describes the practice of the CC in relation to conflicts. When asked to serve on an inquiry, Members are required to disclose any financial or other interest that might be regarded as giving rise to a conflict of interest. A decision is then taken on whether the Member must not be appointed to serve because of a conflict of interest, or whether the interests must be disclosed to parties and published on the CC's website.

6.3 Individual Members must also be aware of their wider responsibility as Members of the CC – namely, to:

- comply at all times with the Code of Practice that is adopted by the CC and with the rules relating to the use of public funds and to conflicts of interest;
- act impartially and in good faith;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations; and
- comply with the CC's rules on the acceptance of gifts and hospitality and of business appointments.

## **7. MANAGEMENT AND FINANCIAL RESPONSIBILITIES**

7.1 The Chief Executive in his role as the CC's Accounting Officer is responsible for ensuring appropriate management and financial systems are in place. The Chief Executive is supported by the Council, the Audit Committee and the Remuneration Committee as appropriate. This section, supported by the Financial Memorandum, provides detailed guidance to the Chief Executive to facilitate him/her in this role.

### **Managing Public Money and other government-wide corporate guidance and instructions**

7.2 Unless agreed by BIS and, as necessary, HMT, the CC must follow the principles, rules, guidance and advice in Managing Public Money, referring any difficulties or potential bids for exceptions to the sponsorship team in BIS in the first instance. A list of guidance and instructions with which the CC must comply is in Appendix 2.

### **Risk management**

7.3 The CC must ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and must develop a risk management strategy, in accordance with the Treasury guidance. It must adopt and implement policies and practices to safeguard itself against fraud and theft, in line with the Treasury's guide: Managing the Risk of Fraud. It must also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract.

### **Business plans**

- 7.4 The CC must submit annually to BIS a draft of the business plan covering the year ahead. An early outline of the plan must be submitted in October with an initial bid for funding, The CC must agree with BIS the issues to be addressed in the plan and the timetable for its preparation. The plan must reflect the CC's statutory duties and, within those duties, the priorities set from time to time by the responsible minister (including decisions taken on policy and resources in the light of wider public expenditure decisions). The plan must demonstrate how the CC contributes to the achievement of BIS's (and other relevant departments') objectives. Unless otherwise agreed the draft must be submitted by 28 February each year.
- 7.5 The business plan must include key strategic objectives and targets and milestones for the year immediately ahead and must be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by the Department. Such targets must cover areas such as the organisation's financial performance; the efficiency and effectiveness of its operations; and the quality and standards achieved in delivering its functions. For areas where CC believes it cannot easily measure final outputs it must ensure that carefully formulated strategic objectives and milestones are in place.
- 7.6 Subject to any commercial considerations, the business plans must be published by the CC on its website and separately be made available to staff.
- 7.7 The following key matters must be included in the plan:
- key objectives and associated key performance targets for the forward year, and the strategy for achieving those objectives;
  - key non-financial performance targets;
  - alternative scenarios and an assessment of the risk factors that may significantly affect the execution of the plan but that cannot be accurately forecast; and
  - other matters as agreed between BIS and the CC.

### **The Competition Commission's delegated authorities**

- 7.8 The CC's delegated authorities which are delegated directly to the Chief Executive in his Accounting Officer role are set out in Appendix 1. The CC must obtain BIS's prior written approval before:

- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the CC's annual budget as approved by BIS;
- incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
- making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the Department;
- making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
- carrying out policies that go against the principles, rules, guidance and advice in Managing Public Money.

## **8. FINANCIAL ARRANGEMENTS WITH BIS**

8.1 The Chief Executive in his role as the CC's Accounting Officer is responsible for working with BIS to ensure that appropriate financial arrangements are in place between BIS and the CC. The Chief Executive is supported by the Council, the Audit Committee and the Remuneration Committee as appropriate. This section, supported by the Financial Memorandum, provides detailed guidance to the Chief Executive to facilitate him/her in this role.

8.2 The guidance in this document may be superseded from time to time by short-term guidance; this is likely to affect procedures for approval of expenditure and limits of delegation. Guidance may be issued by BIS or from other government departments including HMT and Cabinet Office.

### **Budgeting procedures**

8.3 Each year, in the light of decisions by the Department on the updated draft business plan, the Department will aim to send to the CC by 31st March:

- a formal statement of the annual budgetary provision allocated by the Department in the light of competing priorities across the Department and of any forecast income approved by the Department; and
- a statement of any planned change in policies affecting the CC.

8.4 The approved annual business plan will take account both of approved funding provision and any forecast receipts, and will include a budget of estimated payments and receipts

together with a profile of expected expenditure and of draw-down of any Departmental funding and/or other income over the year. These elements form part of the approved business plan for the year in question.

#### **Grant-in-aid and any ring-fenced grants**

- 8.5 Any grant-in-aid provided by the Department for the year in question will be voted in the Department's Supply Estimate and be subject to Parliamentary control.
- 8.6 The grant-in-aid will normally be paid in quarterly instalments on the basis of applications showing evidence of need. Applications can be submitted either in writing or electronically. The CC will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds must be kept to a minimum level consistent with the efficient operation of the CC. Grant-in-aid not drawn down by the end of the financial year must lapse. Subject to approval by Parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the Department will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.
- 8.7 In the event that the Department provides the CC separate grants for specific (ring-fenced) purposes, it would issue the grant as and when the CC needed it on the basis of a written request. The CC would provide evidence that the grant was used for the purposes authorised by the Department. The CC must not have uncommitted grant funds in hand, nor carry grant funds over to another financial year.

#### **Reporting performance to the Department**

- 8.8 The CC must operate management, information and accounting systems that enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in the corporate and business plans. The CC must inform BIS of any changes that make achievement of objectives more or less difficult. It must report financial and non-financial performance, including performance in helping to deliver ministers' policies, and the achievement of key objectives on a quarterly basis. The CC's performance must be formally reviewed by the Department twice a year with the relevant Director General and/or Head of Management Unit. The responsible minister will meet the Chairman and Chief Executive at least once a year.

*Providing monitoring information to the Department*

- 8.9 The CC must provide BIS with such information about its operations, performance of individual projects or other expenditure as BIS may reasonably require. As a minimum, the CC must provide the Department with information monthly that will enable the Department satisfactorily to monitor:
- the CC's cash management;
  - its draw-down of grant-in-aid;
  - forecast outturn by resource headings; and
  - other data required for the Combined On-line Information System (COINS).

*Competition Commission/BIS working level liaison arrangements*

- 8.10 The BIS sponsorship team will liaise regularly with CC officials to review CC financial performance against plans, achievement against targets and the CC's expenditure against its Departmental Expenditure Limit (DEL) and Annual Managed Expenditure (AME) allocations. The sponsorship team will also take the opportunity to explain wider policy developments that might have an impact on the CC.
- 8.11 In the interest of good communications between the CC Council and BIS, a representative of the sponsorship team will be invited to attend the Council's Audit Committee meetings (either in whole or part) as an observer at the discretion of the Chair of the Audit Committee.

**9. COMPETITION COMMISSION STAFF**

**Broad responsibilities for the Competition Commission's staff**

- 9.1 Under the provisions of paragraph 9 of Schedule 7 of the 1998 Competition Act as amended, the Chief Executive under the general supervision of the Council may appoint such staff as he/she thinks appropriate, subject to the approval of the Secretary of State as to numbers. The CC must seek Secretary of State approval if it intends to revise its current terms and conditions for all staff.
- 9.2 Within the arrangements approved by the responsible minister and by BIS, who will liaise with Treasury where appropriate, the CC will have responsibility for the recruitment, retention and motivation of its staff.

9.3 The broad responsibilities toward its staff are to ensure:

- that the CC has in place policies and procedures to ensure that it complies with all relevant legislation and that its policies and procedures enable the Chief Executive to appoint suitably qualified staff who will discharge their responsibilities in accordance with the high standards expected of staff employed by public bodies.
- all staff are familiar with the CC's main aims and objectives;
- that the CC adopts management practices which use resources in the most economical, efficient and effective manner;
- the rules for recruitment and management of staff create an inclusive culture in which diversity is fully valued and appointment and advancement is based on merit;
- there is no discrimination on grounds of gender, marital status, sexual orientation, race, colour, ethnic or national origin, religion, disability, community background or age;
- the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness;
- the performance of its staff at all levels is satisfactorily appraised and the CC's performance measurement systems are reviewed from time to time;
- its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the CC's objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place;
- whistle-blowing procedures consistent with the Public Interest Disclosure Act are in place;
- a code of conduct for staff is in place based on the Cabinet Office's Model Code for Staff of Executive Non-departmental Public Bodies; and
- staff, CC Members and Council Members have appropriate access to expert advice and training opportunities in order to enable them to exercise their responsibilities effectively (in line with wider government commitments on training strategies).

#### **Staff costs**

9.4 Subject to its delegated authorities, the CC must ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

### **Pay and conditions of service**

- 9.5 CC staff are subject to levels of remuneration and terms and conditions of service (including pensions) within the general pay structure approved by BIS and by BIS on behalf of the Treasury. BIS will liaise with Treasury where appropriate on behalf of the CC.
- 9.6 If civil service terms and conditions of service apply to the rates of pay and non-pay allowances paid to the staff and to any other party entitled to payment in respect of travel expenses or other allowances, payment must be made in accordance with the Civil Service Management Code except where prior approval has been given by the Department to vary such rates.
- 9.7 Staff terms and conditions must be set out in an Employee Handbook, which must be provided to the Department together with subsequent amendments.
- 9.8 The CC must operate a performance-related pay scheme that must form part of the annual aggregate pay budget approved by BIS or the general pay structure approved by BIS whichever is applicable.
- 9.9 The travel expenses of Council Members must be tied to the rates allowed for staff of the CC. Reasonable actual costs must be reimbursed.
- 9.10 The CC must comply with the EU Directive on contract workers – the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations.

### **Pensions, redundancy and compensation**

- 9.11 CC staff will normally have automatic entry into the Principal Civil Service Pension Scheme (PCSPS) or in some cases PCSPS by-analogy terms. Those who opt out will be eligible to join a stakeholder pension with an employer contribution based on age. The employer's contribution will be as defined by the terms of the schemes.
- 9.12 Any proposal by the CC to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of BIS. Proposals on severance must comply with the rules in chapter 4 of Managing Public Money.

9.13 The Chief Executive is responsible under the general supervision of the Council for the CC's staffing. He/she is supported in this role by the Council and the Remuneration Committee as appropriate.

## 10 **REVIEW OF COMPETITION COMMISSION STATUS**

10.1 The CC will be reviewed every 3 years. The date of the next review will be in 2013.

### **Arrangements in the event that the Competition Commission is wound up**

10.2 BIS must put in place arrangements to ensure the orderly winding up of the CC. In particular it must ensure that the assets and liabilities of the CC are passed to any successor organisation and accounted for properly. (In the event that there is no successor organisation, the assets and liabilities must revert to BIS.) To this end, the Department must:

- ensure that procedures are in place in the CC to gain independent assurance on key transactions, financial commitments, cash flows and other information needed to handle the wind-up effectively and to maintain the momentum of work inherited by any residuary body;
- specify the basis for the valuation and accounting treatment of the CC's assets and liabilities;
- ensure that arrangements are in place to prepare closing accounts and pass to the C&AG for external audit, and that funds are in place to pay for such audits. It must be for the C&AG to lay the final accounts in Parliament, together with his report on the accounts;
- arrange for the most appropriate person to sign the closing accounts. In the event that another NDPB takes on the role, responsibilities, assets and liabilities, the succeeding NDPB AO must sign the closing accounts. In the event that BIS inherits the role, responsibilities, assets and liabilities, BIS's AO must sign.

10.3 The CC must provide the Department with full details of all agreements where the CC or its successors have a right to share in the financial gains of developers. It must also pass to the Department details of any other forms of claw-back due to the CC.

**LIST OF APPENDICES TO THE DOCUMENT**

Appendix 1 - List of delegated authorities (attached)

Appendix 2 - List of government-wide corporate guidance instructions (attached)

Signed.....

Date.....

(On behalf of the Department)

Signed.....

Date.....

(On behalf of the CC)

## Delegations to the Competition Commission

<b>1. Losses and the making of special payments</b>		
Type of loss	Limit for single item	Aggregate limit for year
<b>Cash losses</b>		
Theft, fraud, arson or gross carelessness	2,000	25,000
Actual cash	2,000	25,000
Equivalents of cash (e.g.: stamps)	5,000	25,000
Unvouched and incompletely vouched payments	2,000	25,000
Irrecoverable losses due to overpayments of pay, fees, allowances and pensions, due to miscalculation, misinterpretation of regulations or full facts not being available (excluding non-disclosure of full facts by the beneficiary short of fraud) or unauthorised issues of cash to individuals in the form of wages, allowances or payments not admissible under regulations applicable to staff on NDPBs.	8,000	25,000
<b>Stores losses</b>		
Theft, fraud, arson, or gross carelessness	2,000	25,000
Incidents of fire, weather and accidents etc	2,000	25,000
Deterioration in store	2,000	25,000
Natural causes, evaporation, shrinkage etc	2,000	25,000
<b>Constructive losses</b>		
E.g.: stores or services, such as technical advice, ordered and delivered or provided but which have proved not to be needed or less useful than anticipated	2,000	25,000
<b>Claims abandoned or waived</b>		
Miscellaneous write off and waivers provided	8,000	25,000
<b>Special payments</b>		
Compensation	500	5,000
Gifts including virtual gifts	500	5,000

The CC must have authority to incur expenditure approved in the budget subject to the following delegations:

<b>Nature of Delegation</b>		<b>Partner Organisation</b>
All projects and programmes; and announcements and policy proposals with a defined lifetime	Resource	£750k
	Capital	£300k
Announcements and policy proposals creating on-going expenditure	Resource and Capital	£0m
Spending commitments beyond 2014-15	Resource and Capital	£0m
Internal funding allocations	Resource and Capital	£0m
Admin expenditure	All expenditure except ICT	£500k
ERG Cabinet Office Spending controls	ICT	£100k
	ICT spend on systems that support administration	£100k
	Marketing and advertising	£15k
	Property –related <sup>1</sup>	£30k
	Consultancy	£20k
Additional requirements	Recruitment & temporary staff	Freeze on external recruitment in place until further notice. Should the freeze be lifted, a review including Ministerial consultation will ensue.
	Procurement	All spend on common goods and services to be channelled via 'Government Procurement', which will outline appropriate processes for Departments to apply.
	HR	Redundancy Schemes require prior approval from Cabinet Office. In addition following the Centralised Procurement Strategy all new generic training should be sourced through Civil Service Learning (CSL). Development or training £10k or higher must go via CSL gateway process.
	Operational excellence	ICT spend over £1m on systems that support Administration, require both HMT and Cabinet Office agreement.
	Moving services online	All Partner Organisations must comply with Government Digital Services (GDS) standards for "Digital by Default" and "Assisted Digital" approaches to services for all public information and services.

<sup>1</sup> This category comprises the signing of new leases, renewals of existing leases, the non-exercise of lease break options, any new property acquisitions, new building developments, sale and leaseback, and any freehold sales as part of national property controls.

Nature of Delegation		Partner Organisation
	ID assurance	All Partner Organisations must agree their alignment plan to the Identity Assurance Strategy with Cabinet Office when developing any online or digitally based transactional service. Includes technical design, service architecture and the standard accreditation requirements.
	Management information	Compliance with Cabinet Office and ERG instructions for a common data standards approach. All public sector organisations to provide management information in a consistent and timely, transparent and auditable manner, enabling meaningful and comparable data across Government.

**List of government-wide corporate guidance instructions**

The CC must comply with the following general guidance documents and instructions:

- this document;
- Appropriate adaptations of sections of Corporate Governance in Central Government Departments: Code of Good Practice available on the Treasury website;
- Managing Public Money;
- Government Internal Audit Standards, issued by the Treasury;
- Management of Risk: Principles and Concepts: issued by the Treasury;
- Managing the Risk of Fraud, issued by the Treasury;
- Government Financial Reporting Manual (FReM), issued by the Treasury;
- the Fees and Charges Guide, issued by the Treasury as Chapter 6 of Managing Public Money;
- Departmental Banking: A Manual for Government Departments, issued by the Treasury as annex 5.7 of Managing Public Money;
- relevant Dear Accounting Officer letters;
- Regularity, Propriety and Value for Money, issued by the Treasury;
- The Parliamentary Ombudsman's Principles of Good Administration;
- the Consolidation Officer Memorandum, issued by the Treasury;
- relevant Dear Consolidation Officer letters;
- relevant guidance and instructions issued by the Ministry of Justice on the Freedom of Information Act;
- Model Code for Staff of Executive Non-departmental Public Bodies: issued by the Cabinet Office;
- other relevant guidance and instructions issued by the Treasury in respect of Whole of Government Accounts;
- other relevant instructions and guidance issued by the central departments;
- specific instructions and guidance issued by the sponsor Department;
- recommendations made by the Public Accounts Committee, or by other Parliamentary authority, that have been accepted by the Government and relevant to the CC.