

**Statement of policy on
competitive impact:
Competitive impact framework**

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Introduction

The BBC is a deliberate intervention in the market. It is established by Charter to provide a public broadcasting service that is available to, and funded by, all. This unique funding position places a number of special responsibilities on the BBC. The BBC must provide services of high quality, integrity and distinctiveness to its audiences, and maintain high standards in the communications industry. Furthermore, everyone who comes into contact with the BBC can expect it to conduct its operations with integrity and competence.

The BBC's main object is the promotion of its Public Purposes. The specific Public Purposes of the BBC are:

- (a) sustaining citizenship and civil society;
- (b) promoting education and learning;
- (c) stimulating creativity and cultural excellence;
- (d) representing the UK, its nations, regions and communities;
- (e) bringing the UK to the world and the world to the UK; and
- (f) in promoting its other purposes, helping to 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.

However, the BBC's activities can also have an impact on the wider market. In particular, competition could be affected, to the detriment of licence fee payers and consumers who benefit from a vibrant broadcasting sector. The Charter therefore places a duty on the BBC Trust, when regulating the BBC Executive, to have regard to the competitive impact of the BBC's activities on the wider market¹.

To fulfil this duty, the Trust must adopt and publish a statement of its policy on the competitive impact of the BBC's activities on the wider market². The BBC Executive must then adopt and publish detailed guidelines, approved by the Trust, applying the Trust's policy statement³.

This document contains the Trust's Competitive Impact Policy Statement, which outlines how the Trust will ensure that the BBC takes account of its competitive impact on the wider market. It also contains the BBC's Competitive Impact Framework, which explains how the policy statement will be applied across the BBC.

¹ Charter, Article 23, (c)

² Agreement, section 66(1)

³ Agreement, section 67 (1) and (2)

Statement of policy on competitive impact

The BBC exists to serve the public interest and its main object is to promote the Public Purposes⁴.

Public Service Activities

The Trust requires the BBC to comply with competition law when carrying out its Public Service Activities. Given the privileged status of the BBC, when carrying out its Public Service Activities, the Trust also requires the BBC, whilst always ensuring the fulfilment of its Public Purposes and taking into account its other obligations in the Charter and the Agreement, to endeavour to minimise its negative competitive impacts on the wider market. This requirement is known as the ‘Competitive Impact Principle’.

The Trust regards the requirement that the BBC endeavours to minimise its negative competitive impacts on the wider market as meaning that the BBC must strive to take the appropriate steps in the given circumstances to achieve this outcome. The Competitive Impact Principle applies to all Public Service Activities and when applying the Competitive Impact Principle 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.

When applying the Competitive Impact Principle, the Trust requires the BBC to consider impacts on consumer welfare, consistent with competition law principle. Impacts on other market participants (such as suppliers, competitors and distributors) will be considered and the BBC must ask what those impacts mean within the context of the BBC's assessment of impacts on consumer welfare. When applying the Public Value Test to a significant change to the BBC's UK Public Services, the Trust will, through its consideration of Ofcom's Market Impact Assessment, take into account direct impacts on suppliers, competitors and distributors (where these are referred to in the Market Impact Assessment) in addition to impacts on consumer welfare in the markets under consideration.

Commercial Activities

The Trust requires the BBC to comply with competition law when carrying out its Commercial Activities. In keeping with the Charter and Agreement, the Trust also requires the BBC's Commercial Activities to fit with the BBC's Public Purpose activities, exhibit commercial efficiency, maintain the BBC's reputation and brand and comply with the Fair Trading Policy and Fair Trading Guidelines, and in particular, avoid distorting the market. In the Trust's view, BBC Commercial Activities should not be regarded as distorting the

⁴ Charter, Article 3

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.⁵ The Competitive Impact Principle will not apply to the BBC's Commercial Activities, as such activities are not intended to directly deliver the Public Purposes. Finally, the BBC's Commercial Activities must take into account the BBC's other obligations in the Charter and Agreement.

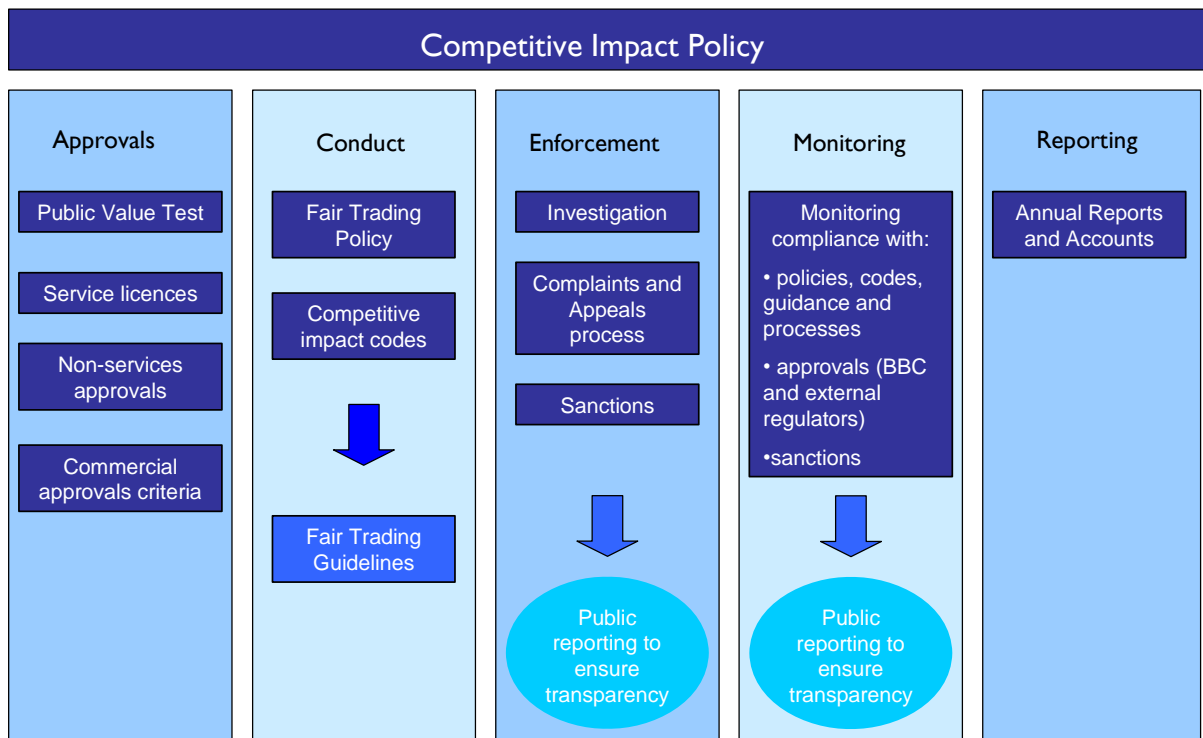
⁵ Further detail on when commercial activities may be considered as distorting the market is contained in the Fair Trading Policy

Competitive Impact Framework

The BBC's 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 Policy 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 BBC's Competitive Impact Framework



The key aspects of each of these elements of the Framework, 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*”⁶...“*which can also include discontinuing a service*”⁷.

UK Public Services

Proposals to make significant changes to the UK Public Services must undergo a Public Value Test (PVT)⁸. It is for the Trust to determine whether changes are significant. 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 change⁹. The judgement that is taken in the PVT, which is specifically governed by a provision in the Agreement, is a more specific test to the Trust’s Competitive Impact Principle which is intended to be applied more widely than the confines of the PVT.

Details of the PVT process can be found at:

www.bbc.co.uk/bbctrust/framework/public_value_test/index.html

The Trust is required to have regard to the competitive impact of the BBC’s activities on the wider market through consideration of Ofcom’s Market Impact Assessment. 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*”¹⁰.

Details of service licences can be found at:

www.bbc.co.uk/bbctrust/framework/bbc_service_licences/index.html

The Trust will use the service licence framework to ensure that the BBC’s UK public services’ negative impacts on the wider market are minimised, and that they fulfil the BBC’s

⁶ Charter, Article 24, (2) (I)

⁷ Agreement, Clause 25, (1)

⁸ Agreement, Clause 23

⁹ Agreement, Clause 26

¹⁰ Agreement, Clause 17, (1)

Public Purposes, taking into account its other obligations under the Charter and Agreement. This may involve the imposition of qualitative commitments and numeric conditions in service licences. Furthermore, no service licence will be issued by the Trust, unless the Trust is satisfied, on the basis of advice provided, that it is in compliance with competition law.

Other BBC activities (Non-Services)

Non-service activities are defined 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 the Agreement”¹¹. 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”¹². 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”¹³.

Details of the processes by which proposals of the BBC Executive for new or significantly changed non-service activities will be considered by the Trust can be found at

www.bbc.co.uk/bbctrust/framework/other_activities.html

Non-service approvals will only be granted if the Trust is satisfied, on the basis of information provided to it by the BBC Executive and any other information that the Trust thinks is relevant, that the BBC has endeavoured to minimise its negative competitive impacts on the wider market, whilst always ensuring the fulfilment of the BBC's Public Purposes and taking into account its other obligations under the Charter and Agreement, in line with the Competitive Impact Principle. The Trust also has the discretion to apply the PVT process to changes to non-services¹⁴. When it does so, the Trust will have regard to the competitive impact of the wider market through consideration of Ofcom's Market Impact Assessment, as outlined above. Furthermore, no non-service will be approved by the Trust unless the Trust is satisfied, on the basis of advice provided, that it is in compliance with competition law.

Commercial Activities

As a general proposition, the BBC’s Commercial Activities must¹⁵:

- 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 Fair Trading Guidelines and, in particular, avoid distorting the market

¹¹ Agreement, Clause 22, (1)

¹² Agreement, Clause 22, (3)

¹³ *ibid*

¹⁴ Agreement, Clause 22, (3)

¹⁵ Agreement, Clause 69, (1)

The Statement of Policy on Competitive Impact and the Fair Trading Policy explains 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:

www.bbc.co.uk/bbctrust/framework/commercial_services.html

The Trust will not approve proposed changes to the BBC's Commercial Services unless the proposal complies with competition law and meets the four criteria set out above.

Conduct of the BBC

Fair Trading Policy

The Trust must adopt a “*statement of policy on fair trading and hold the Executive Board to account for compliance with it*”¹⁶. The Trust's Fair Trading Policy must apply to all of the BBC's Trading Activities, whether or not in connection with its Commercial Services¹⁷. The purpose of the Trust's Fair Trading Policy is to provide overarching principles for the conduct of the BBC's Trading Activities. These principles are then implemented by the BBC Executive in the Fair Trading Guidelines.

The principles contained in the Fair Trading Policy include a requirement on the BBC to comply with competition law when conducting all of its activities; a requirement to also apply the Competitive Impact Principle when conducting its Public Service Activities; and a requirement that Commercial Activities meet the four criteria above.

Details of the Fair Trading Policy can be found at

www.bbc.co.uk/bbctrust/framework/fair_trading.html

Competitive Impact 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*”¹⁸.

Details of the Competitive Impact Codes can be found at:

www.bbc.co.uk/bbctrust/framework/fair_trading.html

¹⁶ Charter, Article 24, (2) (k)

¹⁷ Agreement, Clause 65(2)

¹⁸ Agreement, Clause 66, (2), (3) and (4)

Each Competitive Impact Code explains how the Competitive Impact Principle applies to a particular aspect of the BBC's UK Public Services.

Fair Trading Guidelines

The BBC Executive must adopt and publish guidelines on “*the practical implications of the Trust’s statement of policy on fair trading so far as they relate to the functions of the Executive Board and relevant BBC subsidiaries*”¹⁹. In addition, the BBC Executive must adopt and publish guidelines on “*the application of any statement of the Trust's policy on competitive impact and its competitive impact codes*”²⁰. The purpose of these guidelines is to provide a practical compliance guide for BBC personnel. The Trust's Competitive Impact Policy Statement, Fair Trading Policy and Competitive Impact Codes are implemented by the BBC Executive in the Fair Trading Guidelines.

Details of the Executive Fair Trading Guidelines can be found at:

www.bbc.co.uk/info/policies/commercial_guides/

Enforcement

The Trust must “*set the framework within which the BBC should handle complaints*” and “*play a role as final arbiter in appropriate cases*”²¹. The Trust must also “*where appropriate*” conduct investigations into any activity of the BBC which it has grounds to suspect does not comply with requirements supervised by the Trust²². The Trust must “*set and publish one or more frameworks within which the BBC and commercial arm must handle complaints, and the procedures that are to apply to complaints*”²³.

The BBC's Fair Trading Complaints and Appeals Process is designed to ensure that alleged breaches of the Fair Trading Policy and/or Competitive Impact Codes are effectively handled by the BBC Executive. Complainants who are then unhappy with the findings of the BBC Executive may appeal to the Trust.

Details of the Fair Trading Complaints and Appeals Process can be found at:

www.bbc.co.uk/bbctrust/appeals/fair_trading_complaints.html

The Trust may impose sanctions following an investigation if appropriate. The sanctions available to the Trust if it finds the BBC Executive to be in breach of the Fair Trading Policy and/or the Competitive Impact Codes are set out in the complaints and appeals procedure.

¹⁹ Agreement, Clause 67, (1) (a)

²⁰ Agreement, Clause 67(1) (b)

²¹ Charter, Article 24 (2) (g)

²² Charter, Article 24 (2) (h)

²³ Agreement, Clause 89 (1)

In line with the Trust's duty to ensure that the BBC observes the highest standards of openness and transparency²⁴, the Trust will publicly communicate in an appropriate way, details of its enforcement activities.

Monitoring

The Trust has adopted a range of processes to monitor compliance with the policies, codes, guidance and processes which comprise the Competitive Impact Framework. 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
- Fair Trading Policy and Appeals Committee to assist the Trust in ensuring the BBC's compliance with the Statement of Policy on Fair Trading and Competitive Impact Codes, including reviewing and approving the BBC's Executives' Fair Trading and Competitive Impact Guidelines and considering any appeals of failure to comply with the Trust's statement and codes. The Committee also conducts an annual Fair Trading Audit to ascertain whether the BBC has established and applied a system of controls which provide reasonable assurance that the BBC complies with the Fair Trading Policy.
- Finance and Strategy Committee to consider, review and approve certain financial and other matters, which may include non-services.
- PVT Steering Group 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 on-going 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, 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:

www.bbc.co.uk/bbctrust/about/meetings_and_minutes/bbc_trust_committees.html

²⁴ Charter, Article 23 (f)

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:

www.bbc.co.uk/bbctrust/framework/protocols/index.html

In line with the Trust's duty to ensure that the BBC observes high standards of openness and transparency²⁵, the Trust will publicly communicate in an appropriate way, the results of its monitoring activities.

Reporting

The Trust and BBC Executive will include in the BBC's Annual Report and Accounts, statements of compliance with applicable codes and regulations²⁶.

The Trust will keep all the policies, codes, guidance and processes in the Competitive Impact Framework under review in light of their operation, legal developments, in particular in competition law, regulatory or market developments and anything else the Trust thinks is relevant. In addition the Trust will undertake formal reviews of the Fair Trading Policy and Competitive Impact Codes at least every three years.

²⁵ Charter, Article 23 (f)

²⁶ Charter, Article 45 (3)

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.

"Charter" means the Royal Charter for the continuance of the BBC for the period ending on 31st December 2016.

"Commercial Activities" means the Commercial Trading Activities and the Commercial Services.

"Commercial Services" means the services which are provided, or other activities which are undertaken, by the BBC's 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.

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

"Competitive Impact Framework" means the framework set out in this document encompassing the policies, codes, guidelines and processes which implement the Trust's Competitive Impact Policy Statement across the range of the BBC's activities.

"Competitive Impact Policy Statement" means the Trust's Competitive Impact Policy Statement contained in this document.

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

Competition Law means (i) Article 81 and 82 of the Treaty establishing the European Communities; (ii) the Competition Act 1998 and the Enterprise Act 2002; (iii) other applicable national competition legislation and; (iv) relevant implementing regulations in relation to each of (i), (ii) and (iii), as may be amended from time to time and State Aid Law

"Fair Trading Audit" means the annual audit of the BBC's activities carried out by the Trust to check for compliance with the Fair Trading Policy.

"Fair Trading Complaints and Appeals Process" means the procedure used to handle complaints that the BBC has not complied with the Fair Trading Policy.

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

"Fair Trading Policy" means the statement of policy on fair trading required to be adopted by the Trust by Article 24(2)(k) of the Charter.

"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.

"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 4g of the Charter and the introduction to this document.

"Public Service Activities" means all BBC activities carried out using public funding including publicly funded services and non-service activities, except the Commercial Trading Activities.

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

"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.

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

"UK Public Services" means the services provided by the BBC for the purposes of promoting its Public Purposes which are aimed primarily at users within the UK as defined in Section 100 of the Agreement.