

BBC Executive Fair Trading Bulletin February 2007 – April 2007

The complaints detailed below reflect the outcome of investigation by BBC Management in line with the BBC's process for dealing with Fair Complaints. Further details can be found at www.bbc.co.uk/info/contactus/fair_trading.shtml. Where complainants are dissatisfied with Management's findings they have the right of appeal to the BBC Trust.

SUMMARY OF COMPLAINTS

This is a summary of complaints made against the BBC on fair trading grounds between 20 February and 20 April 2007 including complaints that have been made directly to the BBC, to the Office of Fair Trading (OFT), to Ofcom and to the European Commission.

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

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

The BBC is aware of one ongoing investigation into the BBC's activities by Ofcom during this period.

- *Complaint about Red Bee Media's (formerly BBC Broadcast) contracts to supply media access services to Channel 4 and the BBC.*

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

Media access services are services, including subtitling, audio-description and signing, designed to meet the needs of individuals who are deaf or hard of hearing or blind or partially sighted. IMS alleges that the agreement between Red Bee and Channel 4:

- is in breach of Chapter I of the Act because it prevents, restricts or distorts competition;
- is in breach of Chapter II of the Act because it confers long-term exclusivity and has the potential to foreclose the market; and
- the price prevailing under the contract is predatory in breach of Chapter II of the Act.

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

In December 2005 Ofcom added the consideration of whether Red Bee's media access services contract with the BBC infringes Chapter I of the Act and/or Article 81 of the EC Treaty into the scope of its investigation.

Ofcom has informed the BBC that it will issue its decision in relation to both issues shortly.

Fair Trading Complaints to the BBC

The Kent Messenger Group appealed to the BBC Trust against the findings of a management investigation into a complaint about Radio Kent's trailing of a magazine. The matter was considered by the Trust's Fair Trading Policy and Appeals Committee which concluded that "whilst noting that the issues raised did not amount to a series breach of the BBC's fair trading guidelines in terms of the scale of the activity or likely impact on the market, there were breaches of procedure and the Committee decided to uphold the appeal". BBC Executive accepts the appeal findings and has taken steps to improve its procedure for dealing with Fair Trading complaints. The BBC's Chief Operating Officer has since written to the complainant with an apology. A copy of the Trust's appeal findings can be seen at www.bbc.co.uk/bbctrust/appeals/fair_trading_appeal_findings.html. The BBC has received two new complaints during this period.

Television Licensing Trails

On 9 March 2007, the Director General received a letter from Nick Palmer MP raising an issue which had been brought to his attention by one of his constituents, Mr John Lloyd. In an email to Mr Palmer, Mr Lloyd suggests that the public service trails which inform television licence fee payers of changes to the way in which they can purchase their television licence is a breach of the BBC's Royal Charter. Mr Lloyd alleges that publicising Pay Point, and failing to mention other ways of purchasing a licence fee, falls outside of the permitted forms of advertising allowed, and is publicising a commercial company over other forms of supply.

The investigation is ongoing.

2 entertain and The Communications Practice

On 27 March 2007, the Director General received a letter from Ben Woolley, Content Partners Ltd, complaining about the relationship between 2 entertain (2e) and his competitor, The Communications Practice (TCP). Content Partners Ltd is a promotions business, working with newspapers and publishers to run "innovative promotions using top tier content and ... help enterprises with original content exploit their assets".

2e is a BBC joint venture company, involving Woolworths Group and BBC Video, a division of BBC Worldwide Ltd.

The Communications Practice is a third party organisation, specialising in marketing and creative services, working with video and dvd labels, record companies, media owners and retailers to create licensing and marketing initiatives with audio and visual content.

Mr Woolley alleges that that 2e has an unofficial, exclusive licensing agreement with TCP, for the covermounting of BBC DVDs, as free gifts on newspapers and associated token redemption promotions for BBC. This exclusive agreement, he alleges, gives TCP exclusive access to BBC archive material, resulting in TCP benefiting from an 80% share of this market. Mr Woolley alleges that this arrangement also makes it difficult for him to put together promotional packages where BBC content would form part of the themed package. Mr Woolley feels that the BBC archive should be “open- to- everyone”, and operate on a level playing field.

The Head of Fair Trading has written to Mr Woolley, asking him to clarify aspects of his complaint, and provide any additional information that might support his allegations. The investigation is ongoing.