

Fair Trading Bulletin **September 2006 – November 2006**

Following publication of the Governors' conclusions on a revised Fair Trading complaints and appeals process (see <http://www.bbcgovernors.co.uk/docs/fairtrading.html>) the BBC has introduced a new process (see http://www.bbc.co.uk/info/contactus/fair_trading.shtml) for dealing with Fair Trading complaints. The new process introduces clear separation between BBC Management (who deal with complaints) and BBC Governors (who deal with appeals).

The complaints detailed below reflect the outcome of investigation by BBC Management. Where complainants are dissatisfied with Management's findings they have the right of appeal to the Governors.

SUMMARY OF COMPLAINTS

This is a summary of complaints made against the BBC on fair trading grounds between 1 September 2006 and 30 November 2006 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 formal investigation into the BBC's activities by Ofcom during this period and one ongoing investigation by the European Commission.

- 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 cases shortly.

- Complaint to European Commission re Digital Curriculum

The BBC's proposal to launch its Digital Curriculum service was cleared by the European Commission under the state aid rules, subject to conditions, on 1 October 2003.

In previous Bulletins it was reported that in July 2005, the European Commission wrote to the UK Government stating that a complaint had been made to the Commission alleging that the proposed Digital Curriculum service did not comply, in certain respects, with the conditions previously imposed by the European Commission. The letter also alleged that the scheme for the provision of electronic learning credits by the UK Government might be subject to abuse.

The matter remains under consideration by the European Commission.

Fair Trading Complaints to the BBC

The BBC has received one new complaint during the period.

- Complaint by Kent Messenger Group

BBC Radio Kent County Life Magazine (County Life) is produced and distributed on behalf of BBC Radio Kent by Kent on Sunday Media Publishing Group Ltd (KoS). The magazine is a commercial venture, undertaken by KoS on behalf of BBC Radio Kent.

On 11th August 2006 the Editorial Editor of Kent Messenger Group (KMG) wrote to the BBC's Head of Fair Trading posing a number of questions relating to the business relationship between the BBC and KoS. These were distilled into three key issues: whether there is appropriate separation in terms of operating and accounting between the BBC and Radio Kent; whether

KoS pay an appropriate charge for the material it receives from the BBC and the right to use the BBC logo; and whether it is appropriate for the BBC to mention the magazine on air.

On 28th September 2006, the Head of Fair Trading responded to KMG. He concluded that, following an investigation he was satisfied that there is clear separation between the BBC's publicly funded and commercial activities, there is no use of licence fee money in this activity and KOS pays a fair rate for all of the editorial copy it receives from the station, and the costs incurred by Radio Kent in relation to this activity. He also confirmed that Radio Kent is paid a royalty fee for each magazine sold.

On-air references to County Life magazine are deemed to be appropriate in accordance with the BBC's Fair Trading Guidelines and Editorial Guidelines only where they are editorially justified. The Station's Managing Editor, who has full editorial control, confirmed that any references to the magazine are always editorially justified.

The Head of Fair Trading concluded that the publication of County Life magazine did not constitute a breach of the Fair Trading Guidelines or the Fair Trading Commitment.

Kent Messenger Group has written to the BBC Governance Unit appealing against the findings. The appeal is being considered.

- Complaint by Aquila TV: complete

On 13 June 2006, the Head of Fair Trading was forwarded an email sent by the Managing Director of Aquila TV to BBC Resources. The complainant alleged that BBC Resources had engaged in practices that contravened the BBC's commitment to trading fairly. The Head of Fair Trading responded by letter to Aquila TV on 26 June 2006 requesting further information in order to clarify the basis of the allegations.

The Head of Fair Trading received further (email) correspondence from the Managing Director of Aquila TV on 1 September 2006 and 12 September 2006. This raised a number of issues, including, for example, an allegation that BBC (public service) production staff had informed Aquila TV that they are not allowed to employ post production suppliers other than BBC Resources.

The Head of Fair Trading undertook a detailed investigation of the complainant's allegations and responded by letter to the Managing Director of Aquila TV on 4 October 2006. The Head of Fair Trading informed the complainant that he could find no evidence to support the allegations. The Head of Fair Trading also noted that if the complainant could provide additional evidence to support the allegations, he would be happy to investigate further.