

Competitive impact codes: Code on cross and digital TV promotion

Contents

	Page
Introduction to Codes	3
Purpose of the Codes	3
Operation of the Codes	3
Selection of Specific Codes	4
Review of the Codes	4
Code on cross and digital TV promotion	5
Scope of the Code	5
Areas of potential concern	5
Cross promotion of BBC Programme-Related Materials	6
Cross-promotion of BBC Programme-Related Materials – Particular Issues in the On-line Environment	7
Cross promotion of BBC's Other Commercial Services	8
Digital TV Promotion	9
Definitions	10

Introduction to Codes

Under the Charter, the BBC Trust must have regard to the competitive impact of the BBC's activities on the wider market¹. As required by the Agreement, the Trust has adopted a Statement of Policy on the Competitive Impact of the BBC's activities on the wider market.

In relation to Public Service Activities, the cornerstone of the Policy is the Competitive Impact Principle. This principle provides that, when carrying out its Public Service Activities, the BBC, whilst always ensuring the fulfilment of its Public Purposes and taking into account its other obligations in the Charter and Agreement, must endeavour to minimise its negative competitive impacts on the wider market. In applying the Competitive Impact Principle, the BBC must consider impacts on consumers², and impacts on other market participants such as suppliers, competitors and distributors are considered within this context.

Purpose of the 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"³ ("the Codes").

The Codes apply to activity by the UK Public Services only. Such activity is also subject to the Competitive Impact Principle as outlined above. The purpose of the Codes is to provide the BBC Executive with guidance as to how it should apply the Competitive Impact Principle to those aspects of the operation of its UK Public Services which, in the Trust's view, could raise significant issues regarding the competitive impact of the BBC's activities.

The Codes form part of the BBC's Competitive Impact Framework. A fuller explanation of how the Codes sit within this framework is available at [[link to Statement of Policy on Competitive Impact](#)].

Operation of the Codes

The Codes are intended to:

- Provide clear principles and guidance to the BBC about how to conduct certain activities to prevent problems before they arise;
- provide an analytical framework within which behaviour can be evaluated;

¹ Charter, Article 23(e)

² For a definition of consumers, see the "Definitions" section at the end of this document

³ Agreement, Clause 66(2)

- provide transparency as to how the BBC will deal with those activities; and
- ensure that the BBC Executive and Trust consider complaints and appeals respectively within the same framework. The Trust would expect to see evidence that the principles and any analytical framework of the Codes have been followed in any particular case in which they are relevant.

The Trust recognises that areas of judgement remain and it is not the aim of the Codes to prohibit specific forms of behaviour where this may unduly inhibit the BBC's activities, its duties as a public service broadcaster and its ability to take into account all relevant circumstances in applying the Statement of Policy on Competitive Impact.

The BBC Executive must adopt and publish guidelines on the application of the Codes within the Fair Trading Guidelines⁴. The guidelines provide a more detailed practical compliance guide for BBC personnel on the areas covered by the Codes.

Selection of Specific Codes

In formulating its Codes, the Trust must have regard to *“the extent that the Trust considers them to be relevant, to any fair and effective competition codes issued by Ofcom for the purpose of applying to any description of broadcasters other than the BBC”* and *“to any views expressed by Ofcom as to matters that should be covered by the Trust’s codes”*. In addition, the Trust’s codes may *“deal with matters which are not covered by any fair and effective competition codes issued by Ofcom (and, of course, the duty to ‘have regard’ to any Ofcom codes does not mean that the Trust necessarily have to follow suit even where such codes are relevant)”*⁵

In this document, the Trust sets out its Code on cross and digital TV promotion. The Trust may publish further Codes in future⁶.

Review of the Codes

The Trust will keep the Codes under review, and will, in any event, formally review each of them at least every three years, in light of the operation of relevant policies and guidelines within the Competitive Impact Framework, legal developments, in particular in competition law, regulatory and market developments and anything else the Trust thinks may be relevant.

⁴ Agreement, Clause 67(1)(b)

⁵ Agreement, Clause 66, (2), (3) and (4)

⁶ Agreement, Clause 66(2)

Code on cross and digital TV promotion

Scope of the Code

1. Cross promotion, in the context of this code, refers to the BBC's promotion, through its UK Public Services and related Public Service Activities, of other services and products.
2. Digital TV promotion refers to the BBC's promotion, through its UK Public Services and related Public Service Activities, of digital TV platforms and/or services.
3. Any cross promotion and digital TV promotion by the BBC must be consistent with its privileged position as a publicly funded broadcaster and must comply with competition law (including state aid law).
4. In developing this code, the Trust has made reference to Ofcom's Cross Promotion Code⁷ and also Chapter 10 of Ofcom's Broadcasting Code ("Ofcom's Codes"). Ofcom's Codes outline principles for ensuring that cross-promotions on television are distinct from advertising and that promotions on television, including cross-promotions, do not prejudice fair and effective competition. Ofcom's Codes apply to television services regulated by Ofcom including, where relevant, the BBC's Commercial Services. They do not apply to BBC Public Service Activities. The spirit of Ofcom's Codes has been applied in this code, with appropriate modifications to reflect the BBC's publicly funded status.

Areas of potential concern

5. The Government has recognised that *"it is important that the BBC should continue to promote its services on-air so that licence fee payers are aware of specific programmes and the breadth of the BBC's overall offering"*.⁸
6. However, the Trust recognises that promotion of goods or services by the BBC's UK Public Services and related Public Service Activities could raise concerns about the competitive impact of the BBC's activities on the wider market, through the ability of promotions to direct consumers towards particular goods or services over others.
7. The Trust has identified the following three particular types of promotion through the BBC's UK Public Services and related Public Services Activities which could give rise to concerns:

⁷ Ofcom Cross-promotion Code, published 10 July 2006.

⁸ "A public service for all: the BBC in the digital age", Presented to Parliament by the Secretary of State for Culture, Media and Sport, March 2006, Page 36.

- a) the promotion by the BBC through its UK Public Services and related Public Service Activities of BBC Programme-Related Materials;
 - b) the promotion by the BBC through its UK Public Services and related Public Service Activities of its Other Commercial Services; and
 - c) the promotion by the BBC through its UK Public Services and related Public Service Activities of particular digital platforms/services.
8. The Trust takes the view that it is necessary for the BBC Executive to follow the principles outlined below when engaging in the above three types of promotion, in order to comply with the Competitive Impact Principle. Taking each type of promotion in turn:

Cross promotion of BBC Programme-Related Materials

9. BBC Programme-Related Materials may be trailed through the UK Public Services and related Public Service Activities.
10. BBC Programme-Related Materials in this code refers only to products and services designed to earn a commercial return only and does not include non-profit making material intended to promote the Public Purposes (such as factsheets which may accompany BBC programmes).
11. In relation to such trailing, the following principles apply:
 - Any such trailing must comply with the terms of any cross-promotion undertakings granted to any regulatory authority. The BBC has given an undertaking to the Office of Fair Trading (OFT) in relation to the trailing of BBC magazines⁹ ("the OFT Undertaking").
 - Any trailing of BBC Programme-Related Materials through the UK Public Services and related Public Service Activities must be for clear editorial reasons or Public Purpose reasons, for example, to promote education and learning. For example, the Trust expects such material to be directly related to and trailed alongside the relevant BBC programmes.
 - Any statement or reference to availability of BBC Programme-Related Materials must comply with the competitive impact principle, which the Trust will take to mean in this context that the BBC Executive should take an entirely non discriminatory approach or, where this is not possible, the least discriminatory approach practicable.
12. The BBC Executive must ensure that the nature and extent of any trailing is appropriate, given the above principles. The BBC Executive must include guidance in the Fair Trading

⁹ www.offt.gov.uk/NR/rdonlyres/B42D6BB9-E009-44DA-8DC3-ECFA4B584CDB/0/Televisionbroadcastingservices.pdf

Guidelines to ensure that the nature and extent of trailing not covered by the OFT Undertaking is appropriate. The guidance should cover:

- when such trailing is likely to be editorially justified or justified by Public Purpose reasons
- the type of BBC Programme-Related Materials that is appropriate to trail
- the positioning of such trails
- the style and content of such trails so as to ensure that the trail provides simple factual information about the nature of the BBC Programme-Related Materials and their release for sale
- the frequency of trails.
- when statements or references to availability of BBC Programme-Related Materials will be regarded as having been made on a non-discriminatory basis as above.

Cross-promotion of BBC Programme-Related Materials – Particular Issues in the On-line Environment

13. The BBC has a specific Public Purpose which requires the BBC to deliver to the public the benefit of emerging communications technologies and services¹⁰. In doing so, the BBC has an important role to play as a trusted guide to the internet. In fulfilling this role, the BBC may provide links from its on-line UK Public Services (e.g. bbc.co.uk) to External Websites. For example, a link in order to provide additional sources of information, source material or comment in relation to a programme or news item which will further the public value of BBC content.
14. It is inevitable that some External Websites to which the BBC's on-line UK Public Services link will offer goods and services for sale which are not BBC Programme-Related Materials. The BBC should only link to such External Websites where it is editorially justifiable to do so and should carefully consider to which page of those External Websites it is most appropriate to link.
15. Notwithstanding the BBC's role in delivering its Public Purposes, the Trust recognises that although cross-promotion of BBC Programme-Related Materials from the BBC's on-line UK Public Services will be editorially justified in many instances, it could also raise competitive impact concerns, particularly in relation to the choice of External Websites which offer on-line purchase. Accordingly:
 - The Trust will permit the BBC to trail on-line BBC Programme-Related Materials through the BBC's on-line UK Public Services by linking to External Websites which offer on-line purchase of such BBC Programme-Related Materials (e.g. "buy it now" links) subject to the following principles:

¹⁰ Charter, Article 4

- All such links, whether to an External Website which forms part of the BBC's Commercial Services or a third party External Website, must be editorially justified or for Public Purpose reasons.
 - BBC Worldwide is the BBC's preferred commercial partner. In line with general market practice in the on-line environment, provided that the link is editorially justified or for Public Purpose reasons, it may be appropriate to link to BBC Worldwide External Websites, or the website of a third party which has been licensed to develop BBC Programme-Related Materials and offers on-line purchase of such materials.
 - In line with the Competitive Impact Principle, when linking to such External Websites which offers on-line purchase of BBC Programme-Related Materials, the BBC should endeavour to minimise potential negative competitive impacts on the wider market (having regard to the BBC's Public Purposes and its other obligations in the Charter and Agreement). This should be done, where appropriate and possible, by also linking on a non-discriminatory basis (as at paragraph 11 above) to third party External Websites which offer on-line purchase of the BBC Programme-Related Materials.
 - It must be clear to the user, prior to leaving the BBC on-line UK Public Service in order to journey to an External Website offering BBC Programme-Related Material (including an External Website which forms part of the BBC's Commercial Services), that the user is now navigating to an External Website which is not part of the BBC's Public Service Activities.
16. The BBC Executive should implement the above principles in its Fair Trading Guidelines by giving guidance as to how they will be applied by the BBC. In particular, the guidelines should indicate when the BBC will be regarded as having linked to third party External Websites on a non-discriminatory basis.

Cross promotion of BBC's Other Commercial Services

17. The BBC should not promote the BBC's Other Commercial Services through its UK Public Services and related Public Service Activities unless there is a clear editorial justification for doing so. An example of where there might be editorial justification for doing is where there is an international series of programmes on a particular issue in which both the BBC's UK Public Services and one of the BBC's Commercial Services are participating.
18. The BBC Executive's Fair Trading Guidelines should give guidance as to when there is clear editorial justification for promoting the BBC's Other Commercial Services through its UK Public Services and related Public Service Activities.

Digital TV Promotion

19. The BBC has a specific Public Purpose to take a leading role in the switchover to digital television ("digital TV")¹¹. The BBC has an important role to play in this respect and can influence significantly the penetration, uptake and usage of digital platforms and services. The Trust recognises the benefits that trailing can bring in promoting this Public Purpose.
20. However, the BBC could also have a potentially adverse impact on the market by favouring one platform or service over another when promoting digital TV through its UK Public Services. Recognising this, the Trust requires the BBC Executive to deliver its Public Purposes in the most effective manner, while minimising negative competitive impacts on the wider market in line with the Competitive Impact Principle.
21. In particular:-
- Promotions that refer to any specific digital platform and/or service, must also name all other major digital TV platforms (for example, satellite and cable)/services (for example, individual satellite or cable service providers) on which the BBC's UK Public Services are available. In determining whether to refer to other platforms or services, the BBC Executive must exercise its judgement, taking into account the most effective way to achieve its Public Purposes, whilst minimising negative competitive impacts on the wider market.
 - The Trust currently considers a 'major' platform or service to be one which attracts a customer base of over 500,000 users. The BBC Executive is expected to monitor developments in the market, particularly around the growth of new platforms such as broadband television, and consider referring to other platforms/services below this limit where appropriate. If the BBC reaches a point where the need to refer to all platforms over 500,000 means that the message would be unacceptably cluttered, the Trust will reconsider these requirements.
 - In addition to these principles, the Trust is of the view that the term "Freeview" is more likely to be readily understood by Licence-Fee Payers, such that the BBC may use the brand "Freeview" when referring to the Digital Terrestrial Television platform (DTT).
 - Given the greater capacity to promote platforms or services in the on-line environment, the BBC should provide a central list and details through its on-line UK Public Services and related Public Service Activities of all available digital TV platforms and services on which the BBC's UK Public Services are available.

¹¹ Charter, Article 4(f) - see also in particular Agreement, Clause 38.

Definitions

"Agreement" means the Framework Agreement concluded between the Secretary of State for Culture, Media and Sport and the BBC in July 2006.

"BBC Programme-Related Materials" means goods and services (such as books, DVDs or downloads) which have been commissioned, licensed or developed directly in conjunction with a BBC UK Public Service programme or are relevant to the Public Purposes. These may be produced by a BBC Commercial Activity such as BBC Worldwide or a third party. It does not include non-profit making materials intended to promote the Public Purposes (such as factsheets which may accompany BBC programmes).

"BBC Executive" means the Executive Board established by Article 7 of the Charter.

"BBC Worldwide" means BBC Worldwide Limited, the commercial consumer arm and wholly-owned subsidiary of the BBC.

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

"Codes" means the codes required to be adopted and published by the Trust by Clause 66(2), (3) and (4) of the Agreement.

"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 a 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.

Competition Law means (i) Article 81 and 82 of the Treaty establishing the European Communities; (ii) the Competition Act 1998 and the Enterprise Act 2003; (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.

"Competitive Impact Framework" means the framework adopted by the Trust comprising the policies, codes, guidance and processes implementing the Competitive Impact Policy Statement.

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

"Consumers" means the ultimate users of a particular good or service in a relevant market.

"Cross Promotion" means the promotion by the BBC through its UK Public Services and related Public Service Activities, of other goods and services.

"Editorial Guidelines" means the BBC's Editorial Guidelines as reviewed from time to time by the BBC's Editorial Policy team and available at www.bbc.co.uk/editorialguidelines.

"External Websites" means all websites which are not part of the BBC's Public Service Activities, including the BBC's Commercial Services websites such as BBC Worldwide websites and websites of third parties.

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

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

"Ofcom" means the Office of Communications.

"Ofcom's Codes" means Ofcom's Cross Promotion Code, published 10 July 2006 and Chapter 10 of Ofcom's Broadcasting Code.

"OFT Undertaking" means the undertaking given by the BBC to the Office of Fair Trading in 1992 in relation to the cross-promotion of its magazines on BBC1 and BBC2.

"Other Commercial Services" means all Commercial Services except BBC Programme-Related Materials.

"Public Purposes" means the BBC's public purposes as set out in Article 4 of the Charter.

"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.

"Statement of Policy on Competitive Impact" means the statement adopted by the Trust under Section 66(1) of the Agreement setting out its policy on the competitive impact of the BBC's activities on the wider market.

"Trailing" means making a promotional mention of goods or services and "trailed" and "trailing" should be interpreted accordingly.

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

"UK Public Services" means the services provided by the BBC as defined in Section 100 of the Agreement.