

Code of Fair Trading Practice

RTÉ, as Ireland's national broadcaster in receipt of public funding, has published this Code as evidence of its commitment to conducting its affairs in an accountable manner and delivering value-for-money. The Code derives from the organisation's dedication to Public Service Broadcasting.

The dual funding of RTÉ, a combination of TV Licence Fee and commercial revenue, is public policy and is articulated in broadcasting legislation. Attached to this dual funding system is the requirement to appeal to, and compete for, audiences in competition with commercial broadcasters as a means of maximising commercial revenues, as well as ensuring that public funding is expended in a fair and transparent manner.

RTÉ will safeguard its public service obligations and create opportunities for their growth. In a rapidly changing broadcasting landscape, it will seek to develop a broad range of commercial activities to support this remit. All such activities will be covered by the principles of this Code and appropriate addenda to it e.g. addenda to cover the exploitation of additional commercial activities that may be developed over time.

Objective

This Code of Fair Trading Practice provides the framework for RTÉ to work within to ensure that it operates and trades fairly within the broadcasting market with both competitors and suppliers.

Commitment to Fair Trading

RTÉ has established policies and procedures to govern fair trading by ensuring transparency in its operations, insofar as this is possible, and by reporting on its commitment to fair trading on an annual basis.

Fair Trading Principles and Policies

The following policies will underpin all commercial activities undertaken by RTÉ.

- The prime remit of RTÉ is that of a public service broadcaster; it will seek to ensure that its commercial activities support this remit
- RTÉ will ensure that prices charged to clients are fair market prices
- Public funds received by RTÉ will be applied in accordance with the law
- RTÉ will conform to all aspects of Irish and EU competition law.

These guiding principles will apply to those areas of RTÉ involving commercial contracts with third parties, which currently are:

1. The transmission network
2. The sale of advertising time
3. The commissioning of content
4. The acquisition of content

The specific policies and procedure in each of these areas are outlined on the following pages.

The Transmission Network

RTÉ is committed to being a high quality provider of transmission infrastructure and broadcasting services in Ireland. It will operate them in a transparent and accountable manner and offer access to all users, including those who may be in competition with RTÉ's broadcast services.

- RTÉ will operate its services in a non-discriminatory way for public service and commercial clients alike and guarantees compliance with all statutory obligations
- It will provide a level of excellence in services by offering service level agreements which will ensure a guaranteed level of service availability
- Its business will be conducted in a transparent and accountable manner and it will provide financial reports which clearly show the basis of allocation of costs to the various services it supports
- Tariffs will be calculated and infrastructure costs will be allocated in a fair and transparent manner to all network users. RTÉ will continually monitor its procedures to attempt to ensure all creditors are satisfied in a timely and efficient manner
- RTÉ will encourage the development, promotion and facilitation of broadcasting and communications services – and especially provide advice and support as appropriate to local radio and television services
- RTÉ will provide Consultancy, Project Management, Frequency Planning and System Design for Broadcasting and Communications services, on a commercial basis.

The RTÉ Authority commenced, in late 2002, the process of segregation and incorporation of its transmission network and related operations as a wholly owned subsidiary. The transition to the new operating arrangements will be completed by the end of 2003 at which time the Authority will have approved the business model, initial tariffs and capital requirements of the entity.

From 2004 on RTÉ Transmission Network Ltd will:

- Maintain a schedule of tariffs for Analogue and Digital broadcast services which will be reviewed annually and approved by the board of RTÉ Transmission Network Ltd before 30 September of each year
- Calculate tariffs, based on industry standard practice, that reflect the formal submissions by RTÉ to the regulator on the calculation of Digital Transmission Tariffs
- Analogue broadcast services and microwave link distribution are not currently price controlled by ComReg
- In the schedule of tariffs, provide the pricing point at the commencement of any new contract
- Publish an annual rate-card for the provision of other third party use of services and infrastructure. This rate-card, reflecting the current market rates in an increasingly competitive sector, will normally be published on 31 March of each year.

The Sale of Advertising Time

RTÉ is committed to fair-trading in the sale of advertising time but must retain client confidentiality in the competitive area of media sales. As the organisation is dual funded it must be active in attracting advertising, sponsorship and other commercial revenue, in order to fulfil its public service obligations as the national broadcaster.

- RTÉ is committed to selling its airtime at a commercial rate in the market. It will not act to unfairly distort the market and it will support media pluralism and entry to the free-to-view broadcasting market
- It will not use the existence of public funding to affect the rate at which it sells its airtime. It would never be in the public interest, or in its own interest, for RTÉ to forego additional revenue in this way by selling its airtime at below market rate
- RTÉ undertakes to continue to accept advertising from competitors under existing terms which will be published on its website.

Television Airtime

The cost of airtime on RTÉ Television is based on supply and demand i.e. the price of reaching a particular target audience is based on the total revenue for the period divided by the ratings delivered across the same period for that audience. This represents the “average station price” and agreements are made with clients relative to this price - spot-based rates only apply in exceptional circumstances e.g. GAA Finals, Eurovision Song Contest.

Over 75% of TV airtime agreements are negotiated on an annual basis and are based on a commitment that takes account of share of overall TV spend, volume and loyalty.

In terms of fair trading:

- RTÉ publishes, on a monthly basis, the actual average price for 14 separate audiences
- No other Irish based broadcaster publishes this information.
- RTÉ’s Terms and Conditions of Trading are published in booklet form.

Radio Airtime

A minority of radio airtime deals are done on an annual basis; again, agreed prices are based on a combination of share of overall radio spend, volume and loyalty.

RTÉ Radio operates a fixed price strategy across Radio 1, 2fm and Lyric fm and:

- Spots are sold individually or as part of a combination package - all of which are priced in the published rate card, available on the RTÉ website

- Rates are subject to review and, in the case of any amendments to either price or structure, a revised rate card is issued at least six weeks before it comes into effect. The current rate card came into effect on 7 October 2002.

The Commissioning of Content

RTÉ has an obligation in law to invest in independent production and to include independently produced programmes in its TV schedules. It welcomes this partnership in creativity as part of assuring a high quality television schedule for the Irish audience. RTÉ shares with independent producers the desire to encourage the development of a healthy independent sector; as the major domestic market for Irish independent production, it is committed to acting in a fair and responsible manner in the conduct of business with independent producers.

- RTÉ will continue to pay a market price for independent productions. It will not use any power it may have in the Irish market to set commissioning prices at a level to deny independent producers a fair return on investment
- RTÉ, as part of its due regard for the long-term sustainability of the independent sector, will commit to multi-annual deals where practicable and appropriate. However, to help encourage a multiplicity of voices in production, RTÉ is also committed to continuing its open policy towards new and smaller producers with ideas, talent and energy
- Independent productions will be commissioned across a wide variety of genres and be broadcast across all parts of the schedules, including peak time
- RTÉ is committed to the proper protection of the integrity of the ideas of independent producers
- Measures, already in place to ensure that RTÉ's commercial relationship with independent producers is fair and at arms-length will be maintained. These include:
 - The use of agreed Terms of Trade in all transactions relating to the Independent Production Unit account
 - The publication of a detailed annual review of the operation of the Independent Production Unit, including its financial report
 - A commissioning process within RTÉ that is structured to ensure transparency

The Acquisition of Content

RTÉ, like other broadcasters, competes on price to acquire content in the open market. This includes series, films, programmes, sports rights and formats that it considers best serve its audience and fulfil its remit as a public broadcaster. RTÉ will make itself aware of the rates charged for acquired programmes to broadcasters in territories of a similar market size, by engaging in benchmarking studies every two years. RTÉ will at all times attempt to be compared favourably in these benchmarking studies, by ensuring acquisition costs are at the same level or preferably at a lower level than territories of similar size and with similar market conditions

- RTÉ is mindful of its responsibility to use public funding wisely
- RTÉ will always seek the best possible value for its audience – in both content and financial terms
- RTÉ will make available, as part of annual reporting requirements, comprehensive information on its activity in the acquisitions market, subject always to specific agreements on confidentiality with suppliers
- In particular, RTÉ will continue to maintain its exceptionally high utilisation rate of acquisitions. It has not and will not engage in the practice of buying content without intention to broadcast.

Monitoring the Code of Fair Trading Practice

RTÉ will ensure that a proper compliance procedure is established to monitor its adherence to the Code and to oversee its implementation. A senior Compliance Officer will be tasked with this responsibility and the duties will include:

- Introduction of the Code
- Development of general internal guidelines which ensure compliance with the Code
- Communication of the principles to all appropriate members of staff
- Answering queries from staff, particularly those engaged in the activities referred to in this code
- Logging and dealing with complaints and preparation of an annual report on Code compliance activity.

The overall responsibility for the fulfilment of RTÉ's duties under the Code of Fair Trading Practice will lie with the Director-General.

Independent assessment

This Code of Fair Trading Practice and its implementation shall be reviewed at not less than five yearly intervals by an independent mechanism to be determined during 2003. The results of the review will be published.