



## CODE OF PRACTICE – COMPETITION LAW COMPLIANCE

### 1 INTRODUCTION

- 1.1 The Canal & River Trust (the “Trust”) is one of the UK’s largest charities, having been created in 2012 as the successor to British Waterways and is the guardian of 2,000 miles of historic inland waterways in England and Wales. We have responsibility for canals, rivers, docks and reservoirs – along with historic buildings, archives and three waterways museums, including the National Waterways Museum.
- 1.2 As a charity the Trust has an obligation to maximise its income, including revenues from commercial activities. We want markets connected to the waterways we manage to work well for consumers so that the true potential of our canals and rivers and their long-term survival can be secured, and like any other business we need to operate within the boundaries of competition law.
- 1.3 Our boating customers, both individuals and businesses, make a significant contribution to the care of our waterways through boat licensing and various agreements for rights over, or the use of, our waterways. We also generate income from the provision of over 3,500 directly managed moorings and from boating business customers including licences, connection and network access agreements.
- 1.4 British Waterways Marinas Limited (BWML) is a wholly owned subsidiary which owns and manages a portfolio of 19 marinas of which three are coastal. BWML was created in 2004. It operates separately from the rest of the Trust.
- 1.5 The Trust is therefore not just a network operator, but also a competitor with various other businesses through its commercial activities. This document sets out the Trust’s approach to managing these activities to ensure that it operates within the law at all times. It replaces the ‘Fair Trading: Code of Practice for BW Staff 2006’.
- 1.6 This Code of Practice is primarily for our staff, but in accordance with our value of being ‘open’ we are also making it a public document, available to our customers so that they can understand how we will work. It is available on our website.

## **2 CORE PRINCIPLES**

- 2.1 We want to attract businesses and customers to the waterways we manage and so want active markets relating to all aspects of the waterways as a means of doing this.
- 2.2 We believe that the best ways to achieve this are:
- (a) to ensure that the prices charged by the Trust for its commercial activities are set in a way that does not result in anti-competitive prices and so achieves an appropriate income from these activities;
  - (b) to ensure that when in our role as network operator we deal equivalently between our own commercial activities and those of our competitors;
  - (c) to ensure that commercially confidential information we receive by virtue of our role as network operator is not used to the unfair competitive advantage of our commercial activities; and
  - (d) to ensure that when engaging in commercial activities and not acting in our role as network operator we compete with others offering similar products and services so as to provide best value for consumers and promote innovation.
- 2.3 This document follows a review of the Trust's commercial activities with respect to competition law. We have identified the relevant risk areas, assessed the risks and this document is part of mitigating any risks that we have identified.
- 2.4 The following section expands on these core principles.

## **3 CANAL & RIVER TRUST'S INLAND MARINE COMMERCIAL ACTIVITIES**

### **Network operator role**

- 3.1 The Trust is the guardian of 2,000 miles of inland waterways that are currently (2014) host to a floating community of around 35,000 boats. The Environment Agency and the Broads Authority are also significant network operators of inland navigation.
- 3.2 In this capacity we control access to most of the Trust's network for anyone who wants to operate moorings, a marina or other boating business. This role means that we could, in some circumstances, be seen as having significant market power. However, we will not use this to advantage our own commercial activities over those of others. Our primary interest is in the long term success and popularity of the waterways we manage for consumers.

- 3.3 Accordingly, as set out above, we will not as a network operator treat our own inland marine commercial activities (moorings, marinas or other boating business activities) more favourably than those of other operators.
- 3.4 The Trust will maintain functional separation of its network operator activities from its moorings businesses (on-line moorings team and BWML). This means its mooring businesses should not have any competitive advantages over other operators by virtue of the information the Trust receives as network operator or the decisions it takes regarding access as network operator.
- 3.5 The Trust will operate a transparent and objective process for consideration of applications from off-line mooring and marina developments to connect and gain access to our waterway network.
- 3.6 As network operator and navigation authority the Trust's primary objectives are:
- To preserve, protect, operate and manage inland waterways for public benefit: for navigation; and for walking on towpaths; and for recreation or other leisure-time pursuits of the public in the interest of their health and social welfare.
  - To protect and conserve for public benefit sites, objects and buildings of archaeological, architectural, engineering or historic interest on, in the vicinity of, or otherwise association with inland waterways.
  - To further for the public benefit the conservation protection and improvement of the natural environment and landscape of inland waterways.
  - To promote, facilitate, undertake and assist in, for the public benefit, the restoration and improvement of inland waterways.
  - To promote and facilitate for the public benefit awareness, learning and education about inland waterways, their history, development, use, operation and cultural heritage by all appropriate means including the provision of museums.
  - To promote sustainable development in the vicinity of any inland waterway for the benefit of the public, in particular by: the improvement of the conditions of life in socially and economically disadvantaged communities in such vicinity; and the promotion of sustainable means of achieving economic growth and regeneration and the prudent use of natural resources.
  - To further any purpose which is exclusively charitable under the law of England and Wales connected with inland waterways

### **Licensing function**

- 3.7 As a result of our craft licensing activities, the Trust holds a range of aggregated statistical data and individual consumer data.
- 3.8 The Trust will not use this information to gain any unfair competitive advantage for its commercial activities.

### **BWML**

- 3.9 BWML operates separately from the rest of the Trust. It files separate accounts and its structure, operations and procedures are designed to ensure that it gains no unfair competitive advantage arising from its ownership as a result of the Trust's role as network operator. This means that it has no special treatment as regards any of its commercial activities as a result of the Trust's role as network operator.
- 3.10 Any Trust employee who is a member of the BWML Board must not use any commercially confidential information held by the Trust as network operator to give BWML an unfair competitive advantage. They must excuse themselves from discussion of any agenda item where they hold any such commercially confidential information.
- 3.11 BWML's leases of sites from the Trust are on open market rental rates and / or network access is granted on equivalent terms to those offered to other marina operators. All network related services provided by the Trust to BWML are on terms that are available to other marina operators or, where no equivalent service is offered to other operators, on terms that reflect their full economic cost including apportioning of overheads.

### **Directly Managed Moorings Activities**

- 3.12 We will compete to offer an attractive proposition to customers seeking both long term and short term moorings.
- 3.13 We have an annual price review process in relation to moorings pricing. As part of this process we review a range of factors to set prices for the following year. This includes the condition of the mooring, local amenities and costs.

## **4 COMPETITION LAW COMPLIANCE RESPONSIBILITIES AND TRAINING**

- 4.1 We emphasise that senior management, especially the Executive, has a clear and unambiguous commitment to competition law compliance. The following paragraphs set out the respective roles and responsibilities within the Trust.

## **Board of Trustees of Canal & River Trust**

- 4.2 The Trustees are legally responsible for delivering our charitable objectives.
- 4.3 The Trustees have a duty to ensure that the Trust complies with competition law. The Board receives regular reports from the Audit and Risk Committee which it has instructed to monitor compliance with competition law.

## **Audit and Risk Committee**

- 4.4 The Audit and Risk Committee is a Committee of the Board of Trustees. The Committee has written Terms of Reference that are available on the Trust website, and meets at least three times a year. The Committee monitors the effectiveness of the Trust's governance, its risk management framework and competition law compliance.

## **Internal Audit**

- 4.5 Internal Audit will carry out investigations into issues relating to competition law compliance either at the instigation of the Audit and Risk Committee or the Executive. Internal Audit reports to the Chair of the Audit and Risk Committee on all audit matters. It will also raise with the Audit and Risk Committee, or the Executive, any concerns it may have about compliance with competition law.

## **Ombudsman and Complaints procedure**

- 4.6 The Trust's 'Complaints Procedure' allows anyone who believes that it has not complied with competition law to complain to it in the first instance.
- 4.7 If a complainant is still not satisfied with the outcome, a complainant can go to the independent Waterways Ombudsman. In addition, the Trust has agreed that a marina operator complaining about a breach of the conditions of this Code will be an eligible complainant for the purposes of the Waterways Ombudsman Scheme even if the size of the complainant's business would otherwise disqualify that person from being an eligible complainant.

## **Review and Training**

- 4.8 The Canal & River Trust will maintain this Code of Practice and keep it under review as appropriate given the development of the markets that it operates in and in response to any specific issues that arise.
- 4.9 All relevant staff who come into contact with competitors or who are involved in important commercial decisions (e.g. price setting) will be made fully aware of this Code of Practice and be trained in its use (and in competition law compliance generally).

4.10 The Trust's General Counsel will be responsible for this document and the Trust's approach to competition law compliance generally, and the Trust's Property Director will be responsible for compliance with this Code of Practice.

**12 October 2015**