

RTÉ Fair Trading Policy and Procedures

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Statement of Policy

RTÉ aims to trade fairly. Trading activities, both internal and with external parties, shall be in accordance with market principles, in compliance with competition and other applicable laws and conducted in a manner that ensures that public funds do not subsidise commercial activities or confer any unfair competitive advantage.

RTÉ's public service activities operate at arm's length from its commercial activities.

1.

Context

RTÉ is a public service media organisation. Its role and remit are set out in the Broadcasting Act, 2009 with provisions that are directly informed by the EC Communication on the Application of State Aid Rules to Public Service Broadcasting 2009, (“the Communication”). This Communication was drawn up to provide specific guidance on public service broadcasting as it is not comparable to a public service in any other economic sector.

To address potential distortions of trade that may be caused by the receipt of public funding all Member States are obliged to ensure that public service broadcasting is clearly defined, entrusted, supervised and that their respective legislative systems contain specific provisions to ensure that any trading conditions and competition are not disproportionately affected.

The Communication and the core principles of Fair Trading are reflected in the provisions of the Broadcasting Act 2009 (“the Act”). RTÉ must ensure that it trades fairly, in all of its trading activities, which are both public service and commercial in nature.

The Communication states that: *“While Member States are free to choose the means of financing public service broadcasting, the Commission has to verify, under Article 86(2), that the State funding does not affect competition in the common market in a disproportionate manner.”*

Ireland has chosen a system of dual funding for its public service broadcaster. This means that the cost of fulfilling RTÉ’s remit, as defined in the Act, is funded by both commercially generated revenue and a licence fee.

RTÉ has a clearly defined remit with specific public service objects as set out at section 114(a) to (i) of the Act. In keeping with the dual funded model, section 114 (j) also requires RTÉ:

“so far as it is reasonably practicable, to exploit such commercial opportunities as may arise in pursuit of the objects outlined in paragraphs (a) to (i).”

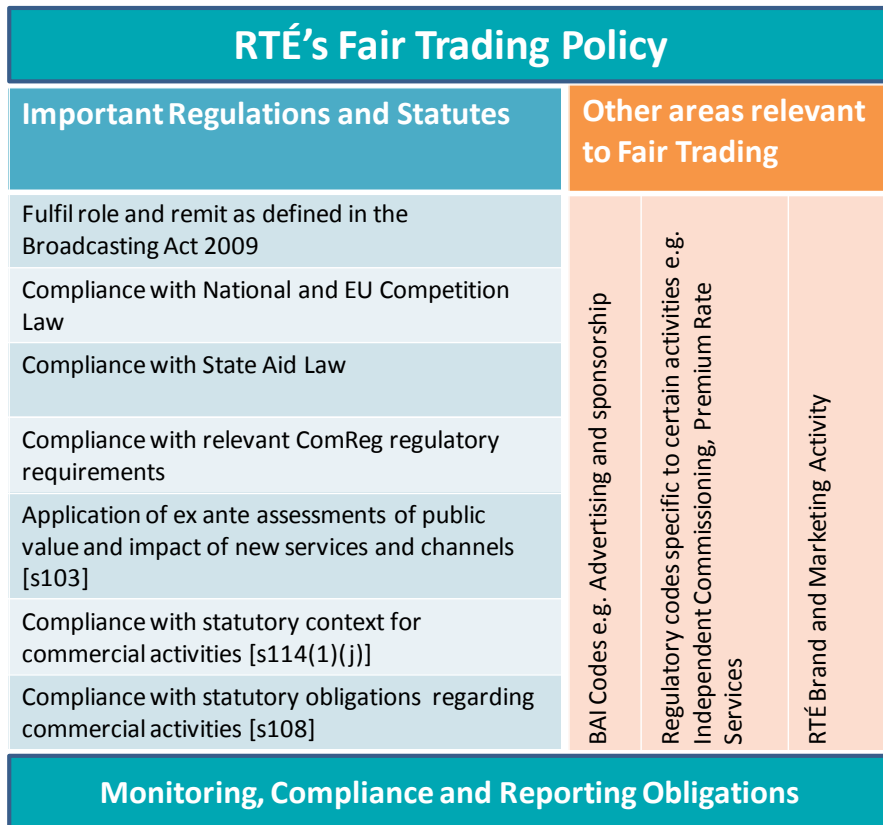
This provision is further referenced at section 108 of the Act as follows:

- (1) The commercial activities undertaken by a corporation in pursuance of its exploitation of commercial opportunities object shall
 - a) be operated in an efficient manner so as to maximise revenues, and*
 - b) be used to subsidise its public service objects.**
- (2) All transactions or arrangements entered into by a corporation as between the activities arising from
 - a) its public service objects, and*
 - b) its exploitation of commercial opportunities object shall be made at arm’s length and on commercial terms”**

¹¹ http://ec.europa.eu/competition/state_aid/legislation/broadcasting_communication_en.pdf

Section 103 of the Act also requires that RTÉ is subject to a public value test (PVT) and market impact assessment for any new services it proposes to introduce.

In addition to the specific rules for the Public Service Broadcaster there are a number of other laws and regulations that are relevant to or overlap with Fair Trading requirements. These include, though not exhaustively, those set out under EU and national competition law, EU Audiovisual Media Services Directive, EU Electronic Communications Framework Directive, and public procurement requirements. In addition, there is a range of regulatory codes and frameworks that apply to specific trading activities that RTÉ undertakes such as advertising codes, commercial communications to children, Fair Trading Code for Independent Commissioning, Premium Rate Services, Broadcast Transmission and Multiplex Regulatory Framework. This overlap is illustrated in the diagram below.



2.

RTÉ Trading Activities

Definitions

The term Fair Trading will mean different things to different stakeholders. RTÉ defines fair trading in the following way:

- to trade in a manner that is compliant with both EU State Aid law and national competition law with regard to both its public service activities and commercial activities
- to trade in a manner which ensures that public funds are not used to subsidise RTÉ's commercial activities
- to trade in a manner that ensures that RTÉ's commercial activities are compatible with its public service objects and exhibit commercial efficiency
- to ensure that its editorial integrity or independence is not conflicted or undermined by any use or association with the RTÉ brand and that its reputation is protected at all times
- to ensure that the RTÉ brand is used appropriately and in a manner that reflects its value.

RTÉ defines Trade in the following way:

By trade RTÉ means the activity of buying or selling goods or services for commercial consideration, which may take place internally within RTÉ (such as between its public service activities and its commercial activities) or between RTÉ and third parties.

The scope of this policy covers 'trade' in connection with *all* of RTÉ's activities:

- those in pursuit of its public service objects,
- those undertaken to exploit commercial opportunities
- and the use of the RTÉ brand.

2.1 Commercial Trading Activities

RTÉ is entitled (and obliged under the Act section 114(j)) to engage in commercial activities that may arise in pursuit of its public service objects. Within these parameters the types of commercial trading activities that RTÉ and its subsidiaries currently undertake include:

- sale of commercial airtime (advertising) and sponsorship
- exploitation of intellectual property such as sale of programme rights or merchandising
- provision of paid for content services such as via subscription
- provision of production facilities
- provision of access to masts and towers for non-broadcast users
- publications
- generation of income from the staging of concerts and other events
- brand marketing and merchandising.

2.2 Public Service Trading Activities

RTÉ also engages in trading activities that are fundamental to the delivery of its public service remit and come within the scope of the RTÉ Fair Trading Policy and Procedures. Those activities include:

- acquisition and licensing of programme rights
- sports rights acquisitions
- commissioning of programmes from independent producers
- purchase of goods and services.

2.3 The RTÉ Brand

The term “RTÉ Brand” means the following:

- the RTÉ name, initials and logo
- the names and logos of its programmes and services
- all related products and publications.

RTÉ brands are the intellectual property of RTÉ. RTÉ seeks to protect the goodwill and reputation that it has in its brands by registering them as part of its portfolio of trademarks.

The use of the RTÉ brand suggests:

- a direct or strong association between RTÉ and a product or service
- that a product or service originated within RTÉ
- that RTÉ supports or endorses a product or service.

3.

Fair Trading Framework

RTÉ's Fair Trading Policy is underpinned by the following principles:

1. **Arm's Length Principle:** that a clear separation exists between RTÉ's public service activities and its commercial activities
2. **Fair Competition:** that RTÉ's trading activities shall be conducted fairly and at prices that reflect market conditions
3. **Transparency and Accountability:** that RTÉ's trading activities are conducted in a transparent manner, with due regard for commercially sensitive information, and shall have an appropriate framework for accountability and governance.

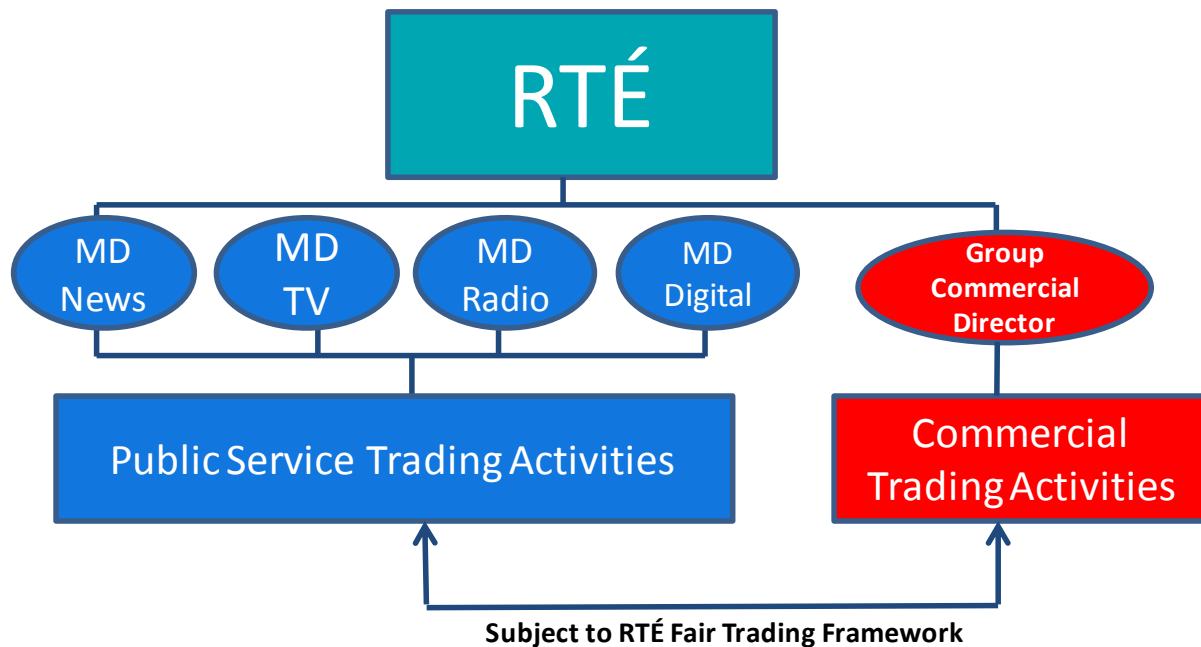
To deliver on this policy the following rules of procedure apply;

3.1 Arm's Length Principle

RTÉ seeks to ensure that its public service activities operate at arm's length from its commercial activities and that it can demonstrate in a transparent manner that public funds are not used to support commercial activities. The following rules shall apply to ensure that this principle is implemented:

- transactions involving trade between public service and commercial activities must be conducted on an arm's length basis
- persons working within these trading activities must be clearly identified and aware of their obligations
- specific operational practices must be distinctly defined and compliant with relevant guidelines or codes of conduct
- financial statements must show the costs and revenues from public service activities separately from those connected with commercial activities
- such separation, in the form of functional separation must be clearly demonstrated through appropriate agreements.

RTÉ’s commercial and public service trading activities are separated functionally as illustrated below:



3.2 Fair Competition

The following rules shall apply to *all* of RTÉ’s trading activities. RTÉ shall:

- ensure that its staff continue to be briefed to ensure that they are familiar with the requirements of EU and national competition law
- ensure that any trade shall be at a price that reflects market conditions
- ensure that its trading activities continue to comply with respective sector specific regulation and other regulatory or statutory codes.

Impact on Competition

The EC Communication referred to above, sets out the requirement for Member States to put in place an evaluation mechanism prior to the introduction of a new service. This requirement is set out at Paragraph (88) of the Communication as follows:

“In order to ensure that the public funding of significant new audio-visual services does not distort trade and competition to an extent contrary to the common interest, Member States shall assess, based on the outcome of the open consultation, the overall impact of a new service on the market by comparing the situation in the presence and in

the absence of the planned new service. ... This impact needs to be balanced with the value of the services in question for society. In the case of predominantly negative effects on the market, State funding for audio-visual services would appear proportionate only if it is justified by the added value in terms of serving the social, democratic and cultural needs of society, taking also into account the existing overall public service offer”.

Section 103 of the Act reflects this ex ante requirement at national level. There is an evaluation of public value² by the Minister including:

- the importance of the proposal in respect of pursuance of RTÉ’s public service objects
- the compatibility with EU and Council of Europe recommendations on public service broadcasting
- the costs and revenues associated with the proposal and any impact on existing public service provision
- the extent to which the proposal contributes to meeting the democratic, cultural, linguistic, educational and social needs of Irish society, or individual groups within Irish society, and/or Irish communities outside of Ireland
- the extent to which the service will be accessible to the public
- the extent to which the proposed service will reach underserved audiences
- the contribution to media plurality.

The provision also requires an external sectoral impact assessment to be conducted by the independent regulatory authority. The factors evaluated as part of such an assessment may include:

- relevant market dynamics and, where appropriate, adjacent markets
- likely future developments in these markets
- the likely impact on competition of the presence of the new service in this context, such as potential loss of channel (service) revenue for existing players and the potential incremental share for the proposed service
- more dynamic impact such as potential to foreclose market entry

In addition to this formal section 103 assessment, RTÉ seeks to ensure that it respects market principles at all times and is cognisant of the impact on the market prior to the introduction of any new service.

RTÉ conducts a comprehensive review of its portfolio of services as part of its multi-annual funding review (as per section 124). This review comprises but is not limited to the following types of analysis:

² Broadcasting Act 2009, Section 103 (8)

- an audit - which examines the demographic profile, audience reach and platform availability of each service
- a qualitative review of each service, that looks at its fit with RTÉ objectives, the audience appeal, the quality or distinctiveness of the service, the wider impact of service in Irish society and the value for money / efficiencies of the service
- a public value framework is applied to each service which involves an evaluation of the performance of the service based upon a number of key measures across three dimensions of public value notably; High Quality and Distinctive Content; Serving Irish Society and Citizens and Value for Money
- a consideration of the impact of the services on the wider market
- the portfolio in its entirety is reviewed in the context of delivery of RTE's remit, the wider audience profile, market conditions, technological change and so forth to enable RTÉ to reconfigure the service / genre mix or to recalibrate individual services to deliver on the principle of universality.

If a new service is proposed as a result of this multi-annual review of the portfolio, this may be evaluated by the relevant authorities through section 103.

Furthermore, on an ongoing basis any internal proposal for a new service shall be assessed by senior management and members of the RTÉ Executive not only on its merits and relevance to RTÉ's remit but also in terms of its potential impact on competition in the market.

RTÉ is also subject to ad hoc external reviews such as those proposed by the Minister.³

3.3 Transparency and Accountability

In order to ensure that the principle of transparency and accountability is implemented, RTÉ shall operate within the following governance framework:

Internal Oversight

RTÉ has established a Fair Trading Committee which is a sub-committee of the RTÉ Board and bears responsibility for oversight of RTÉ's Fair Trading Policy. Its functions shall be to:

- review reports from the Fair Trading Officer
- oversee and where necessary review internal practice and procedures including complaints procedure
- commission periodic reviews of RTÉ Fair Trading practice.

³ Most recent examples include Ministerial Review of Efficiency of RTÉ Practices and Economic Analysis of the Advertising Market in Ireland 2013.

RTÉ shall have a designated internal resource to lead and address its Fair Trading Policy and Procedures. The functions of the Fair Trading Officer (FTO) shall include:

- driving the implementation of Fair Trading Policy and relevant guidelines across the organisation
- being the point of contact for internal and external queries
- reporting to the Fair Trading Committee on performance
- revising and updating internal guidelines where appropriate
- overseeing training and development of staff in pursuit of best practice
- assessing and making decisions on complaints regarding non-adherence to the Fair Trading Policy.

Fair Trading Complaints Procedure

A Fair Trading Complaints Procedure, as approved by the Fair Trading Committee and implemented by the Fair Trading Officer shall be set in place.

A review mechanism that is independent of and separate to the Complaints Procedure shall be set in place as approved by the Fair Trading Committee.

Non-Compliance

Any issue of alleged non-compliance by an RTÉ staff member may be subject to the RTÉ Disciplinary Procedures as implemented by RTÉ Human Resources.

In addition, the “Code of Business Conduct for RTÉ Employees” shall require that the behaviour and conduct of RTÉ employees in carrying out their duties is guided by a number of named policies, including this Fair Trading Policy. Any alleged breach of the Code of Business Conduct is addressed through appropriate action under the Disciplinary Procedures.

Fair Trading Policy Review

RTÉ Fair Trading Committee shall periodically review this framework and shall conduct a formal review at least once every 3 years, or more frequently as deemed appropriate by the RTÉ Fair Trading Committee or relevant authority. This review shall be set against the following criteria:

- an assessment of operations and processes in terms of effectiveness and compliance
- assessment of best practice in fair trading guidelines both with other comparable PSBs and in other sectors
- any other relevant considerations.

External Oversight and Reporting

In addition to the internal reporting and oversight mechanisms outlined above, the following mechanisms for external oversight will apply:

- oversight and review of implementation by the Broadcasting Authority of Ireland as part of its Annual Funding Review of RTÉ
- a report on Fair Trading Policy and implementation shall be included in the RTÉ Annual Report which is laid before the Houses of the Oireachtas.

4.

RTÉ Fair Trading Framework Applied to Commercial Trading Activities

The parameters within which RTÉ may conduct commercial activities is set out in the Broadcasting Act 2009:

In section 114, which sets out RTÉ's principle objects and associated powers, part (j) states that "*so far as it is reasonably practicable, to exploit such commercial opportunities as may arise in pursuit of the objects outlined in 114 (a) to (i)*". In other words, RTÉ may carry out commercial activities in pursuit of its public service objects.

More specifically in section 108 the Act states that "*the commercial activities undertaken by a corporation in pursuance of its exploitation of commercial objects shall (a) be operated in an efficient manner so as to maximise revenues, and (b) be used to subsidise its public service objects*".

This section goes on to state that all transactions in pursuit of public service objects and the exploitation of commercial opportunities shall be made at arm's length and on commercial terms, which have been addressed previously in this document.

In accordance with these statutory obligations, RTÉ's commercial trading activities are governed by the Fair Trading Policy and in particular the principles of the Fair Trading Framework as set out in Section 3.

The Group Commercial Director shall oversee the operation of commercial trading activities, regularly review the portfolio of commercial activities, set commercial targets, report into the RTÉ Group and publicly report on the commercial trading activities in the RTÉ Annual Report. Annual commercial performance targets will be specified in the Annual Statement of Performance Commitments (ASPC) and subject to oversight by the BAI.

All RTÉ staff engaged in commercial activities shall report to the Group Commercial Director, shall be accountable in respect of their adherence to the Fair Trading Policy and are subject to RTÉ's Code of Business Conduct. The Group Commercial Director shall oversee the operations of all commercial trading activities and these activities shall be governed by the following commercial criteria:

- be consistent with RTÉ's public service remit
- at all times uphold RTÉ's editorial integrity and its guiding principles as set out in the RTÉ Public Service Statement
- be operated in an efficient manner in order to maximise the net return to RTÉ's public service activities.

We Set out below is a high-level summary of how the Fair Trading Framework applies to certain of RTÉ's commercial activities. More detailed internal 'working guidelines' shall be further developed where appropriate, as directed by the RTÉ Fair Trading Committee and the Fair Trading Officer, over and above what already exists herewith for the specific commercial trading activities.

Advertising Sales

- The principles of fairness, transparency and equity shall continue to underpin RTÉ's approach to all its advertising sales activities
- RTÉ seeks to achieve the best available market price for all its advertising sales

- RTÉ advertising sales practices will continue to be subject to rigorous review as part of the internal audit programme of work.

TV Advertising Sales

- RTÉ Television sales shall continue to publish maintain and regularly review as appropriate its trading system as approved by the Group Commercial Director <http://tvmediasales.rte.ie/wp-content/uploads/2014/11/RTE-TELEVISION-TRADING-SYSTEM-2015.pdf>
- RTÉ Television will continue to publish its advertising sales terms and conditions
- Discounts offered shall continue to be offered on a fair, reasonable and consistent basis.

Radio Advertising Sales

- RTÉ Radio sales shall continue to publish, maintain and regularly review as appropriate its trading system as approved by the Group Commercial Director
- RTÉ Radio will continue to publish its advertising sales terms and conditions
- Discounts offered shall continue to be offered on a fair, reasonable and consistent basis.

Sponsorship

- RTÉ shall continue to engage in sponsorship practices in a way that is appropriate to its public service objects and in accordance with the BAI Codes and the Broadcasting Act 2009
- RTÉ seeks to achieve the best available market price for the sponsorship of appropriate programmes.

Commercial trading activities subject to sector specific regulation

Some RTÉ commercial trading activities are bound by formal regulatory codes and obligations, they include:

The Supply of Transmission, Distribution and Multiplexing Services

One of RTÉ's public service objects as set out in the Broadcasting Act 2009 is the provision of a national public service multiplex. RTÉ's activities in the supply of transmission, distribution and multiplexing services are subject to the Electronic Communications Framework 2002. Pursuant to this the DTT transmission, distribution and multiplexing services provided by RTÉ and national and quasi-national broadcast transmission and distribution services provided by its subsidiary, 2rn, are regulated by ComReg. Fair competition, including non-discrimination and pricing according to market conditions are central to this regulatory framework.

Premium Rate Services

ComReg has responsibility for licensing and oversight of Premium Rate Services (PRS) and has produced a detailed Code of Conduct. RTÉ, as with any stakeholder engaged in any such activities (e.g. phone-ins to programmes or competitions) must comply with this code.

There is a complaints and review mechanism specifically for this as set out at: http://www.comreg.ie/licensing_and_services/premium_rate_services.716.html

5.

**RTÉ Fair Trading Framework
applied to Public Service
Trading Activities**

RTÉ's public service trading activities are governed by the Fair Trading Policy and in particular the principles of the Fair Trading Framework as set out in Section 3.

All individuals engaged in such activities shall be accountable in respect of their adherence to the Fair Trading Policy and are subject to RTÉ's Code of Business Conduct. RTÉ's public service trading activities must adhere to the following criteria:

- be consistent with RTÉ's public service objects and strategy
- be responsive to the needs of its audience and the public interest
- uphold RTÉ's editorial integrity and its general guiding principles as set out in the RTÉ Public Service Statement
- strive to achieve value for money.

In addition to the above criteria, some areas of activity carry their own internal guidelines.

Programme Rights Acquisition

- RTÉ shall bid for rights to programming that are aligned with the remit and content strategy of RTÉ's portfolio of services and its public service objects
- RTÉ shall bid for rights at a price that reflects market conditions
- RTÉ shall use such acquired rights to deliver relevant content to its audience
- RTÉ shall seek to effectively utilise its inventory of programme licences.

Sports Rights Acquisition

The guiding principles behind any decision to bid for and/or acquire sports rights are as follows:

- RTÉ shall bid for rights that are consistent with its public service objects
- RTÉ shall engage in a way that reflects RTÉ Sport's strategy – to offer the best possible access to Irish and international sporting events for the audience
- RTÉ shall bid for rights at a price that reflects market conditions
- RTÉ shall make the most effective use of these rights – including exploring possibilities for multimedia coverage or analysis where it has the relevant rights.

Independent Commissioning

Section 112(4) of the Broadcasting Act sets the framework for RTÉ's practice with regard to independent commissioning. A **Code of Fair Trading Practice** involving all relevant stakeholders and the BAI, shall be drawn up, periodically reviewed and approved by Minister. The current RTÉ Code in respect of commissioned TV programmes is in place since October 2013. A Code of Fair Trading Practice for Radio commissioning shall be adhered to and regularly reviewed.

6.

Use of the RTÉ Brand

The use of RTÉ's brand in trading is governed by the Fair Trading Policy and in particular the principle of the Fair Trading Framework as set out in Section 3.

The term "RTÉ Brand" means the following:

- the RTÉ name, initials and logo
- the names and logos of its programmes and services
- all related products and publications.

RTÉ brands are the intellectual property of RTÉ. RTÉ seeks to protect the goodwill and reputation that it has in its brands by registering them as part of its portfolio of trademarks.

The use of the RTÉ brand suggests:

- a direct or strong association between RTÉ and a product or service
- that a product or service originated within RTÉ
- that RTÉ supports or endorses a product or service.

Set out below is a high-level summary of how the Fair Trading Framework applies to the use of the RTÉ brand;

Guiding Principles of RTÉ Brand Use

- The RTÉ brand may be used in connection with RTÉ's public services and the promotion of its public service remit.
- The RTÉ brand may be used in the course of approved commercial activities undertaken by or on behalf of RTÉ, in pursuit of RTÉ's object to exploit commercial opportunities
- Use of the RTÉ brand must be appropriately documented by way of license arrangement or other arrangement.
- The RTÉ brand should not be used in a manner that implies promotion or endorsement of a third party product or service without the explicit permission of RTÉ and with an appropriate arrangement put in place.
- RTÉ shall ensure that its brands are not associated with any inappropriate organisation, service or content, or used in a manner that may impact negatively on RTÉ.
- The use of RTÉ brands and logos must conform to the detailed specifications set out in the RTÉ Brand Guide (www.rte.ie/branding).

Where the use of the RTÉ brand is licensed in connection with commercial activities undertaken by a third party, the following criteria shall apply:

- any arrangement must be documented by way of an appropriate licence or other agreement
- any arrangement should provide an appropriate commercial return to RTÉ
- any arrangement must ensure that its value and integrity are protected at all times.

All merchandising associated with the RTÉ brand must reflect and be consistent with the values and integrity of the RTÉ brand.

RTÉ only accepts sponsorship by third party organisations which are appropriate to the brand values of RTÉ or the programme or service being sponsored.

RTÉ brands may be incorporated into the names of wholly owned subsidiaries of RTÉ or joint ventures involving RTÉ provided such usage is consistent with RTÉ brand values and guidelines.

The above also applies to brands associated with RTÉ or that originate from within RTÉ, even if such brands do not incorporate the RTÉ name, initials or logo.

The significant current example of this type of brand is SAORVIEW. The brands “SAORVIEW”, “SAORVIEW Approved” and the SAORVIEW logo are registered trademarks of RTÉ.

The brand SAORVIEW can be used in the following contexts:

- SAORVIEW is the digital terrestrial television (DTT) platform in Ireland
- SAORVIEW has a product approval process in place that licences manufacturers to market receivers (TVs and decoder boxes) that have undergone SAORVIEW receiver testing certification as being “SAORVIEW Approved”
- retailers who comply with specified criteria and sell SAORVIEW Approved products may use the SAORVIEW logo in-store and on point of sale materials.

The principles of RTÉ brand use apply to the use of the SAORVIEW brand, as well as any further limitations and specifications as set out in the SAORVIEW Brand Guidelines, licence agreements and agreements with registered retailers.

This version of the RTÉ Fair Trading Policy and Procedures was approved by the RTÉ Fair Trading Committee on January 25th 2016. This document may be reviewed and updated from time to time as deemed appropriate by the RTÉ Fair Trading Committee.