

FINANCIAL MEMORANDUM

I. INTRODUCTION

1. This financial memorandum, which forms part of the Framework Document for the Competition Commission (CC), sets out in greater detail certain aspects of the financial framework within which the CC is required to operate.
2. The terms and conditions set out in the combined Framework Document and financial memorandum may be supplemented by guidelines or directions issued by the Secretary of State in respect of the administration, management or finance of the CC.
3. The CC must satisfy the conditions and requirements set out in the combined document, together with such other conditions relating to the administration, management or finance of the CC as the Secretary of State may from time to time impose.

II. THE COMPETITION COMMISSION'S INCOME AND EXPENDITURE - GENERAL

The Departmental Expenditure Limit (DEL)

4. The CC's current and capital expenditure form part of the sponsoring Department's Resource DEL and Capital DEL respectively.

Expenditure not proposed in the budget

5. The CC must not, without prior written Departmental approval, enter into any undertaking to incur any expenditure that falls outside the CC's delegations or which cannot be funded from its annual budget as approved by the Department.

Procurement

6. The CC's procurement policies must reflect guidance from the Office of Government Commerce including *Procurement Policy Guidelines*. The CC must also ensure that it complies with any relevant EU or other international procurement rules.
7. Periodically and wherever practicable the CC's procurement must be benchmarked against best practice elsewhere and contracted out where this would achieve better value for money.

Value for money

8. Procurement by the CC of works, equipment, goods and services must be based on value for money, i.e. quality (in terms of fitness for purpose) and delivery against price. Where appropriate, a full option appraisal must be carried out before procurement decisions are taken.

Competition

9. Contracts must be placed on a competitive basis and tenders accepted from suppliers who provide best value for money overall.
10. Proposals to let single-tender or restricted contracts must be subject to a specified delegated authority, and the CC must send to the Department after each financial year a report for that year explaining any contracts between £50,000 and the delegation thresholds in Annex 1 of the Framework Document in which competitive tendering was not employed. All Proposals above the delegated level will need BIS clearance.

Timeliness in paying bills

11. The CC must collect receipts and pay all matured and properly authorised invoices in accordance with the terms of contracts or within 30 days, as provided for in Managing Public Money. The CC must comply with the British Standard for Achieving Good Payment Performance in Commercial Transactions (BS 7890) and with the Late Payment of Commercial Debts (Interest) Act 1998 as amended.

Novel, contentious or repercussive proposals

12. The CC must obtain the approval of the Department before: incurring any expenditure for any purpose which is or might be considered novel or contentious, or which has or could have significant future cost implications, including: changes in staff benefits; making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the Department; making any change of policy or practice which has wider financial implications (e.g. because it might prove repercussive among other public sector bodies) or which may significantly affect the future level of resources required.

Claims against the Competition Commission

13. The CC will, where possible, meet any claims for compensation and damages from within its existing resources but the Department will consider providing additional budget to cover any losses. Each case will be considered entirely on its own merits.

Variations from Approved Estimates

14. The CC must notify the Department immediately in writing if it becomes apparent at any time during the year that an over-spend on the overall allocation notified to the CC at the beginning of the year is likely to occur. Similarly, the CC must notify the Department as soon as it becomes aware that is likely to under-spend by more than the equivalent of 2% of its overall provision.

Risk management

15. The CC must ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and must develop

a risk management strategy in accordance with the Treasury guidance *Management of Risk: A Strategic Overview*.

16. The CC must adopt and implement policies and practices to safeguard itself against fraud and theft, in line with Treasury's guide *Managing the Risk of Fraud*.
17. The CC must take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter into a contract.

Wider Markets

18. In accordance with the wider markets policy the CC must seek to maximise receipts from non-Exchequer sources if this is consistent with:
 - (a) the CC's main functions;
 - (b) its business plan; and
 - (c) as agreed with the Department.

III. THE COMPETITION COMMISSION'S INCOME

Grant-in-aid

19. Under paragraph 7(1) of Schedule 7 to the Act, the Secretary of State is required to pay to the CC such sums as she/he considers appropriate to enable it to perform its functions. Grant-in-aid will only be used in respect of the functions of the CC, having regard to the objectives of the CC and the provisions of the Framework Document.
20. The CC must have regard to the guidance in *Managing Public Money* that it must seek grant-in-aid according to need.
21. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds must be kept at the minimum level consistent with the efficient operation of the CC. Grant-in-aid not drawn down by the end of the year must lapse. However, where draw-down of grant-in-aid is delayed to avoid excess cash balances at year-end, the Department will make available in the next financial year - subject to approval by Parliament of the relevant Estimates provision - any such grant-in-aid which is required to meet any liabilities at year end, such as creditors. The CC working balance of grant-in-aid must not exceed its net current liabilities at any quarter end.

End-year flexibility

22. The Department will aim to set firm multi-year plans and cascade end-year flexibility (EYF) on budgets where possible. In particular, the Department will aim to:
 - agree, ahead of the year in question, a rolling three-year budget, fixed for at least the first year and with indicative amounts for subsequent years;

- decide at that point the CC's likely entitlement to EYF against the overall Departmental position (having regard to any loss of EYF as a result of Departmental Expenditure Limit (DEL) Reserve claims made by the Department) and Ministerial priorities, on the presumption that 80% of any under-spend by the CC that represents slippage (as opposed to e.g. initial overprovision or abandonment of a project or programme) will normally be available for carryover in the area where it has arisen;
- adjust (if necessary) and confirm the amount of EYF when accurate information is available in the Public Expenditure Outturn White Paper, taking account of outturn and of any DEL Reserve claims which might limit the EYF entitlement of the Department itself. [NOTE: Unused grant-in-aid does not determine EYF. This is because grant-in-aid is outside the sponsoring Department's DEL budget and merely contributes to the cash-financing mechanism for an NDPB. What hits the Department's DEL budget is the actual spending of the NDPB in resource terms, whether or not financed by grant-in-aid. It is therefore the NDPB's under-spending in resource terms which generates the DEL EYF and which the Department will aim to cascade down to the NDPB.]

Receipts from sale of goods or services

23. Receipts from the sale of goods and services, (including certain licences where there is a significant degree of service to the individual applicant), rent of land, and dividends are classified as negative public expenditure in national accounts and are therefore normally offset against the DEL (i.e. they provide additional DEL spending power).
24. If there is any doubt about the correct classification of a receipt the CC must consult the Department, who will consult the Treasury as necessary.

Fines, taxes and other receipts

25. Most fines and most taxes (including levies and some licenses) are not negative public expenditure and do not provide additional DEL spending power. Such receipts must be surrendered to the Department or, if retained, must either reduce the need for grant-in-aid or, if used to finance additional expenditure by the CC, must require additional DEL cover from the Department.

Interest earned

26. Any interest earned by the CC on its assets must be given the same budgeting treatment as the cost of capital charge on the assets.
27. The cost of capital charge and any interest receipts on most DEL financed assets score as resource DEL.
28. If the receipts are used to finance additional expenditure by the CC, the Department will need to ensure it has the necessary DEL cover. Any interest earned on cash balances arising from

grant in aid or other Exchequer funds must be treated as a receipt from an Exchequer source and may be retained by the CC on the basis that the grant in aid provided by the Department must be reduced by a corresponding amount.

Unforecast changes in in-year income

29. If the negative DEL income realised or expected to be realised in-year is less than estimated, the CC must, unless otherwise agreed with the Department, ensure a corresponding reduction in its gross expenditure so that the authorised provision is not exceeded.
30. If the negative DEL income realised or expected to be realised in the year is more than estimated, the CC may apply to the Department to retain the excess income for specified additional expenditure within the current financial year without an offsetting reduction to grant in aid. Such applications will be considered by the Department taking account of competing demands for resources. If an application is refused any grant in aid must be commensurately reduced or the excess receipts must be required to be surrendered to the Exchequer via the sponsor Department. (These arrangements are subject to the provisions set out under the heading *Disposal of assets* below.)

Build-up and drawdown of deposits

31. The CC must comply with the rules that any DEL expenditure financed by the drawdown of deposits counts within DEL and that the build up of deposits may represent a saving to DEL (if the related receipts are negative DEL in the relevant budgets).
32. The CC must ensure that it has the necessary DEL provision for any expenditure financed by drawdown of deposits.

Proceeds from disposal of assets

33. Disposals of land and buildings are dealt with in Sections VI and VII below.

Gifts and bequests received

34. The CC is free to retain any gifts, bequests or similar donations. These must be treated as receipts.
35. Before proceeding in this way the CC must consider if there are any associated costs in doing so or any conflicts of interests arising. The CC must keep a written record of any such gifts, bequests and donations, and of their estimated value and whether they are disposed of or retained.

Borrowing

36. The CC will not borrow (by bank overdraft or otherwise), charge any asset or security, lend, give any guarantee, indemnity or letter of comfort (except in its normal course of business in

contracting with suppliers) or take on any other form of contingent liability (whether or not legally binding), without the consent of the Department.

37. Consent is given to the making of loans to staff for the purchase of travel season tickets.
38. Consent is given to the making of salary advances to staff at the CC's discretion.
39. The Department agrees to the CC indemnifying Members in the form already agreed.
40. The CC must observe the rules set out in Managing Public Money when undertaking borrowing of any kind. The CC must seek the approval of the Department to ensure that it has any necessary authority and budgetary cover for any borrowing or the expenditure financed by such borrowing. Medium or long term private sector or foreign borrowing is subject to the value for money test in Managing Public Money.

IV. RESERVES

41. No grant-in-aid must be paid into any reserve held by the CC. Funds in any reserve may be a factor for consideration when grant-in-aid is determined.

V. EXPENDITURE ON STAFF

Staff costs

42. Subject to its delegated levels of authority, the CC must ensure that the creation of any additional posts does not incur forward commitments which will exceed its ability to pay for them.

Pay and conditions of service

43. The staff of the CC, whether on permanent or temporary contract, must be subject to levels of remuneration and terms and conditions of service (including superannuation) approved by the Secretary of State in accordance with paragraph 9(4) of Schedule 7 to the 1998 Act as amended.
44. The CC has delegated pay status from the Department, which agrees annually the level of delegated pay. The CC will discuss any major changes to the overall pay structure with the Department.
45. The travel expenses of Members must be at rates applicable to CC staff. Reasonable actual costs must be reimbursed.

46. The CC must operate a performance-related pay scheme which must form part of the general pay structure approved by the Department and by the Department on behalf of the Treasury.
47. The CC must comply with the EU directive on contract workers “Fixed Term Employees (Prevention of Less Favourable Treatment)”.

Pensions; redundancy/compensation

48. Under the terms of the Superannuation Act 1972, as amended, staff of the CC are members of the Principal Civil Service Pension Scheme.
49. CC staff will normally have automatic entry into the Principal Civil Service Pension Scheme (PCSPS) or in some cases PCSPS by-analogy terms. Those who opt out will be eligible to join a stakeholder pension with an employer contribution based on age. The employer’s contribution will be as defined by the terms of the schemes.
50. Any proposal by the CC to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the approval of the Department. Proposals on severance payments must comply with Managing Public Money.

VI. NON-STAFF EXPENDITURE

Capital expenditure

51. Subject to being above an agreed capitalisation threshold, all expenditure on the acquisition or creation of fixed assets must be capitalised on an accruals basis. Expenditure to be capitalised must include (a) acquisition, reclamation or laying out of land; (b) acquisition, construction, preparation or replacement of buildings and other structures or their associated fixtures and fittings; and (c) acquisition, installation or replacement of movable or fixed plant, machinery, vehicles and vessels.
52. Proposals for large-scale individual capital projects or acquisitions will normally be considered within the CC’s corporate planning process. Applications for approval by the Department [and if necessary the Treasury] must be supported by formal notification that the proposed project or purchase has been examined and duly authorised by the Council. Regular reports on the progress of projects must be submitted to the Department.
53. Within its approved overall resources limit the CC has delegated authority to spend up to amounts specified in the Framework Document on any individual capital project or acquisition. Beyond that delegated limit, the Department’s prior authority must be obtained before expenditure on an individual project or acquisition is incurred.

Transfer of funds within budgets

54. Unless financial provision is subject to specific Departmental or Treasury controls (e.g., where provision is ring-fenced for specific purposes), transfers between budgets *within* the total capital budget, **or** between budgets *within* the total revenue budget, do not need Departmental approval.

Lending, guarantees, indemnities, contingent liabilities, letters of comfort

55. The CC must not, without the Department's prior written consent, lend money, charge any asset or security, give any guarantee or indemnities or letters of comfort, or incur any other contingent liability whether or not in a legally binding form.

Grant or loan schemes

56. Unless covered by a delegated authority, all proposals to make a grant or loan to a third party, whether one-off or under a scheme, must be subject to prior approval by the Department, together with the terms and conditions under which such grant or loan is made. If grants or loans are to be made under a continuing scheme statutory authority will be required.
57. The terms and conditions must include a requirement on the receiving organisation to prepare accounts and to ensure that its books and records in relation to the grant or loan are readily available for inspection by the Department and the C&AG.
58. See also below under the heading *Management and disposal of fixed assets*.

Gifts, write-offs, losses and other special payments

59. The CC will not, without the prior approval of the Department, make, or approve the making of any special payments; abandon or waive any claim or write off any losses; other than any payment, claim or loss of a class specified in the Framework Document and subject to the limits for individual items and aggregate limits for the year in respect of that class specified in that Schedule.
60. Gifts by management to staff are subject to the requirements of Managing Public Money and the associated Cabinet Office guidance on non-pay rewards.

Leasing

61. Prior Departmental approval must be secured for all property and finance leases. The CC must have capital DEL provision for finance leases and other transactions that are in substance borrowing.

Competition Commission Estate

62. The CC must have an Estates strategy. This must follow Office of Government Commerce guidance and include a section justifying value for money derived from those properties

retained for occupational purposes, properties held for investment purposes and the management process for both. This must be reviewed annually.

63. A copy of the CC's Estate strategy must be sent to the Department following each annual review.
64. Unless otherwise agreed with the Department prior Departmental approval must be secured for all property and proposals exceeding the lower of 1000sqm or 5% of the CC's total estate. This applies to new properties; lease renewals/extensions and the exercising of break clauses.
65. Unless otherwise agreed all property leases outside delegation must be approved by BIS. Proposals must be supported by a business case and in relevant circumstances, a Gateway Review.
66. Before entering into any lease the CC must demonstrate that the lease offers better value for money than purchase.
67. All property disposals, rent reviews, lease renewals and acquisitions must be carried out in co-ordination with the Office of Government Commerce.
68. The estate must be managed in accordance with all good Government practice.

Public/Private Partnerships

69. The CC must seek opportunities to enter into Public/Private Partnerships where this would be more affordable and offer better value for money than conventional procurement. Where cash flow projections may result in delegated spending authority being breached the CC must consult the Department.
70. Any partnership controlled by the CC must be treated as part of the CC in accordance with UK GAAP and consolidated with it, subject to any particular treatment required by UK GAAP. Where the judgement over the level of control is a close one the Department will consult the Treasury (who may need to consult with the Office of National Statistics over national accounts treatment).

Financial investments

71. The CC must not make any investments in traded financial instruments without the prior written approval of the Department, nor must it aim to build up cash balances or net assets in excess of what is required for operational purposes. Equity shares in ventures that further the objectives of the CC must equally be subject to Departmental approval unless covered by a specific delegation.

Unconventional financing

72. Unless otherwise agreed with the Department, the CC must not enter into any unconventional financing arrangement.

Commercial insurance

73. The CC must not take out any insurance without the prior approval of the Department, other than third party insurance required by the Road Traffic Acts and any other insurance which is a statutory obligation or which is permitted by Managing Public Money.
74. The CC will be expected to cover third party losses from its own budget but, in exceptional circumstances, the Department may consider providing additional budget to cover losses but each incidence will be considered entirely on its own merits.
75. A Certificate of Exemption for Employer's Liability Insurance has been issued to the CC.

VII. MANAGEMENT AND DISPOSAL OF FIXED ASSETS

Register of assets

76. The CC must maintain an accurate and up-to-date register of its fixed assets.

Disposal of assets

77. The CC must dispose of assets that are surplus to its requirements. Assets must be sold for best price, taking into account any costs of sale. High value assets must be sold by auction or competitive tender unless otherwise agreed by the Department, and in accordance with Managing Public Money.
78. The CC may normally retain receipts derived from the sale of assets provided that:
- (i) the Department and the Treasury are content for the CC to retain these receipts;
 - (ii) they are used to finance other capital spending;
 - (iii) the Department receives prior notification of individual sales; and
 - (iv) total sales in any financial year do not exceed a specified limit, normally 3% of the CC's grant in aid.
79. If, notwithstanding the above, the CC disposes of assets which have been purchased, improved or developed with Exchequer funds and the receipts amount to more than £1 million, or where the disposal has unusual features of which Parliament must be aware, Parliamentary approval must be secured for the receipts to be reinvested. The receipts must therefore be surrendered to the Department that will then submit an Estimate seeking approval for the receipts to be appropriated in aid by the Department and for a corresponding increase in the CC's grant-in-aid. If the proposed new investment exceeds the CC's relevant

delegated authority the Department's approval will be needed. If the proposed new investment is novel or contentious, the Treasury's approval will be also needed.

80. If the criteria in paragraph 78 above are not met, any receipts must be dealt with in line with the rules on surplus in-year receipts (see paragraphs 23 and 24 above).

VIII. BUDGETING PROCEDURES

Setting the annual budget

81. From 2011, the CC will be requested to submit initial bids for funding for the following year as part of the business plan in **October** each year, in order to ensure adequate time for agreement of a bid in the course of **November**. The bids must comprise a detailed forecast of expenditure by budget heading for the following financial year and indicative overall bids for the next two years, together with forecast workload estimates and staffing levels and any necessary supporting narrative. Information must also be provided on forecast performance against key targets for the current year.
82. Payments of the grant in aid will be made in advance of need. Payments will normally be made quarterly for the first three quarters of the year at the beginning of April, July and October. Payment for the final quarter of the year will be made in two instalments, one at the beginning of January and one at the beginning of March. At the request of the CC, payments may be made monthly. The CC will apply for the sum needed for the relevant period. The application will specify:
- the relevant period;
 - the expected workload;
 - the forecast spend for the relevant period and the year to the end of the current period;
 - the CC's forecast bank balances and current liabilities for the end of the current period; and
 - the receipts or income expected during the relevant period.
83. The application will be accompanied by a statement by the Accounting Officer in the following terms:
- "I certify that the conditions attaching to the grant in aid have been duly observed in relation to money received for the accounting period ended (the previous quarter)."*

Monitoring Requirements

84. The Department will be provided with the financial statements specified below:
- forecast expenditure (or actual expenditure where known) for each of the four quarters of the current year by agreed budget category will be submitted with grant-in-aid claims in the last week of March (this claim will also provide forecasts for the next financial year), June, September, December (for two months) and February (one month).

- actual expenditure by budget category for each quarter as soon as actual expenditure figures become available and no later than one month after the end of the quarter, outlining variance from **forecasts** originally submitted for the financial year and revised forecasts submitted with grant-in-aid claims, with an accompanying narrative explanation.
 - the budget allocation, spend to date and forecast outturn of capital projects (including IT) estimated to cost more than £500,000, at their start, end and other appropriate intermediate stages.
 - details of the actual outturn for the preceding financial year will be submitted to the Department by 30 June for each of the same headings as the original budget.
85. Any grant-in-aid provided by the Department for the year in question will be voted in the Department's Estimate and will be subject to Parliamentary control.
86. The total expenditure of the CC, whether financed by the grant-in-aid or from some other source, impacts on the Department's DEL.

General conditions for authority to spend

87. Once the budget has been approved by the Department and subject to any restrictions imposed by the Secretary of State/this document the CC must have authority to incur expenditure approved in the budget without further reference to the Department, on the following conditions:
- the CC must comply with the delegations set out in Appendix 1 of the Framework Document. These delegations must not be altered without the prior agreement of the Department;
 - the CC must comply with the conditions set out in paragraph 12 above regarding novel, contentious or repercussive proposals;
 - inclusion of any planned and approved expenditure in the CC's budget must not remove the need to seek formal Departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
 - the CC must provide the Department with such information about its operations, performance of individual projects or other expenditure as the Department may reasonably require.

IX. BANKING

Banking arrangements

88. The CC's Accounting Officer is responsible for ensuring that the CC's banking arrangements are in accordance with the requirements of Managing Public Money. In particular he/she must ensure that the arrangements safeguard public funds and are carried out efficiently, economically and effectively.

89. He/she must therefore ensure that:

- these arrangements are suitably structured and represent value-for money, and are reviewed at least every two years, with a comprehensive review, usually leading to competitive tendering, at least every three to five years;
- sufficient information about banking arrangements is supplied to the Department's Accounting Officer to enable the latter to satisfy his/ her own responsibilities (see the Framework Document);
- the CC's banking arrangements must be kept separate and distinct from those of any other person or organisation;
- adequate records are maintained of payments and receipts; and
- adequate facilities are available for the secure storage of cash.

X. COMPLIANCE WITH INSTRUCTIONS AND GUIDANCE

Relevant documents

90. The CC must comply with the Framework Document and the general guidance documents listed in Appendix 2 of the Framework Document;

XI. REVIEW OF FINANCIAL MEMORANDUM

91. This financial memorandum will normally be reviewed at least every 3 years (or following a review of the CC's functions as provided for in the Framework Document).

92. The Treasury will be consulted on any significant variation proposed to this financial memorandum and the associated Framework Document.