



EUROPEAN COMMISSION

Brussels, 01.10.2003
C(2003)3371fin

**Subject: State aid No N 37/2003 – United Kingdom
BBC Digital Curriculum**

Sir,

1. PROCEDURE:

- (1) By letter dated 20 January 2003, registered on 24 January 2003, the UK Authorities notified to the Commission the approval by the Secretary of State for Culture, Media and Sport (“Secretary of State”) of the new Digital Curriculum service to be provided by the British Broadcasting Corporation (‘BBC’). By letter dated 13 March 2003, registered on 19 March 2003, the UK Authorities provided additional information.
- (2) By letter to the Commission dated 10 February 2003, registered on 11 February 2003, Research Machines plc filed a complaint on behalf of itself and other complainant companies (collectively ‘the complainant’) in respect of the new Digital Curriculum service of the BBC. The complainant provided additional information on various occasions both before and after the formal filing of the complaint.
- (3) By letter dated 12 March 2003 the Commission services requested the UK Authorities to provide additional information. By letter dated 2 May 2003, registered on the same day, the UK Authorities provided further information. By letter dated 4 June 2003, the Commission services requested the UK Authorities for further information. By letter dated 11 July, registered on the same day, the UK Authorities responded providing further information and clarification to their notification of 20 January 2003. By a further letter dated 25 July, registered on the same day, the UK Authorities wrote to the Commission extending the period for the adoption of a decision on the notification to 1 October 2003.

The Right Hon Jack Straw MP
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2. DESCRIPTION OF THE SCHEME

- (4) On 9 January 2003, the Secretary of State approved the BBC's proposals for the Digital Curriculum, a new online service that would provide interactive learning materials free to homes and schools. The approval would allow the BBC to spend £150 million from the license fee funds on the Digital Curriculum over a period of five years from the date of approval of the scheme by the Commission.
- (5) The Digital Curriculum will provide an extensive online service, accessed via the internet. The proposed service is aimed for use in schools and homes. The Digital Curriculum service will be accessible through the BBC's existing BBCi online site and the Curriculum Online portal (see paragraph 9 below); in both cases free to all users. The service will be accessible by all with a PC and internet connection, or other suitable receiving devices. The Digital Curriculum is primarily intended to be a broadband service, but at the same time one where the majority of materials will nevertheless be accessible via narrowband connections. A broad range of media would be used in providing the Digital Curriculum and it will involve a mix of interactive learning resources.
- (6) The service will be presented through an online interface generically known as a Virtual Learning Environment (VLE), enabling users to personalise and manage Digital Curriculum resources. A VLE would act as a 'portal' to online curriculum mapping, assessment, communication, delivery, tutor support and tracking facilities. It will thus deliver some or all of the following:
 - controlled access to curriculum elements that can be separately assessed and recorded;
 - tracking student activity and achievement against these elements using simple processes for course administration and student tracking that make it possible for tutors to define and set up a course;
 - support of on-line learning, including access to learning resources, assessment and guidance. The learning resources may be self-developed, or professionally authored;
 - communication between the learner, the tutor and other learning support specialists as well as peer-group communications;
 - links to other administrative systems, both in-house and externally.
- (7) It is noted that there are systems available that go beyond the functionality of the VLE cited above and provide more integration between learning, administration and management. These are referred to as MLEs (managed learning environments).
- (8) The Commission understands that there are four widely distributed MLEs currently available through the commercial market. Additionally, there are also various providers of electronic learning materials in the UK market.
- (9) It is of significance that in addition to the BBC's Digital Curriculum service the UK Authorities have also introduced other schemes to encourage 'e-learning

and teaching'. These have taken different forms in England, Wales, Northern Ireland and Scotland:

- In England, the largest 'market' in the UK, the government has launched the Curriculum Online portal providing a search engine and an electronic library of certified, educational materials. In addition, the Government has introduced an Electronic Learning Credit (eLCs) scheme whereby £330 million would be provided between the financial years 2002/3 to 2005/6 for schools to spend exclusively on non-BBC materials. The Commission understands that the eLCs are to be used strictly for material which is certified as eligible for the Curriculum Online programme; the programme comprises of products that have been designed and produced to deliver the Curriculum as taught in England.
 - Wales is addressing the issue of e-learning in two ways. It will continue to rely on the commissioning function of the Qualifications, Curriculum and Assessment Authority for Wales (ACCAC). Wales has also recently launched NGfL Cymru, which is making available locally generated materials in support of the distinctive curriculum in Wales. In addition, the Welsh Assembly Government continues to make funding available to schools for the purchase of digital content, materials and software.
 - Northern Ireland is continuing to commission commercial content for schools (by competitive tender exercises).
 - The Scottish Executive has recognized that, owing to the small size of the market for digital learning resources in Scotland, there is a need to fill gaps by direct procurement; eLCs would not be appropriate for the funding systems in Scotland since education budgets are devolved to local education authorities rather than to individual schools. The Scottish Executive is currently involved in a large procurement exercise to produce digital content relevant for the Scottish curriculum.
- (10) Given the competitive and dynamic nature of the market, the Commission notes that in giving her approval to the BBC for the Digital Curriculum, the Secretary of State accepted that "the BBC's proposal would have had a significant impact on the market, potentially disproportionate to the evident public benefit, in the absence of measures which would prevent such an impact. However, with the conditions set out ... and the continuing funding for electronic learning credits as part of Curriculum Online, announced today by the DfES, the Digital Curriculum will be able to play a positive role in the competitive and growing market for digital learning resources. I am also satisfied that it will provide a valuable and distinctive service to schools and home learners". The Secretary of State's approval for the Digital Curriculum laid out qualitative as well as quantitative stipulations on the BBC.
- (11) As the funding for the Digital Curriculum would come from the 'license fee' and the service will compete with active commercial providers the Commission has been asked to assess the 'scheme' under State Aid Rules both by the UK Authorities and the complainant.

- (12) The Commission has not separately assessed the eLC scheme referred to in paragraph 9 for the purpose of Article 87(1) as the scheme relates to funding provided to state schools for the purchase of educational materials, granted without discrimination related to the origin of the products concerned. State schools providing compulsory education are not considered to be carrying out an economic activity and are thus not subject to State Aid rules.

Legal basis for the scheme

- (13) A Royal Charter constitutionally establishes the BBC. An accompanying Agreement recognises its editorial independence and sets out its public obligations in detail. The current Royal Charter and Agreement date from 1996 and run to 2006. Thus, the legal bases for the scheme are the 1996 BBC Charter ('the Charter') and the accompanying 1996 Agreement ('the Agreement').
- (14) Article 3(a) of the Charter sets out the remit of the BBC: "to provide, as public services, sound and television broadcasting services (whether by analogue or digital means) and to provide sound and television programmes of information, education and entertainment for general reception in Our United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and the territorial waters thereof, and on board ships and aircraft (such services being hereinafter referred to as 'the Home Services') and for reception elsewhere within the Commonwealth and in other countries and places overseas (such services being hereinafter referred to as 'the World Service') the Home Services and the World Service together being hereinafter referred to as the 'the Public Services'."
- (15) Article 3(b) of the Charter states: "Subject to the prior approval of Our Secretary of State or within such limits as may be agreed from time to time between the [BBC] and Our Secretary of State, to provide, as public services other services whether or not broadcasting or programme supply services (such services being referred to as "the Ancillary Services")"
- (16) Article 16 of the Charter provides for the use of Licence Revenue by the BBC for the purposes of the Charter.
- (17) Article 10 of the Agreement provides for the authorisation by the Secretary of State allowing the use of licence revenue by the BBC for services that are approved under Article 3(b) of the Charter.
- (18) The Digital Curriculum has been approved by the Secretary of State as an ancillary service per Article 3(b) of the Charter and the funding from the license fee has been authorised per Article 10 of the Agreement.

3. ASSESSMENT OF THE MEASURES

State aid within the meaning of Article 87(1)

- (19) The State aid rules of the Treaty apply to undertakings. According to the case-law an undertaking is an entity which is carrying out an economic activity. In assessing whether an activity is to be considered ‘economic’, it should be recalled that, according to settled case-law: “*the concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, and that any activity consisting in offering goods and services on a given market is an economic activity*”.¹ Indeed, for an activity offering goods or services to be considered as not economic one should be able to exclude the existence of a market for comparable goods or services. The fact whether the entity in question is profit-oriented or not is not relevant for its qualification as undertaking. As already indicated, the kind of services provided by the digital curriculum are also provided by private actors in order to make profits. Thus, notwithstanding its free delivery, the provision of the Digital Curriculum service is to be considered as an economic activity.
- (20) In order to ascertain whether the scheme constitutes aid within the meaning of Article 87(1), the Commission has to assess whether the scheme:
- is granted by the State or through state resources;
 - provides an economic advantage;
 - is capable of distorting competition by selectively favouring certain undertakings or the production of certain goods;
 - affects trade between Member States.

Use of State Resources

- (21) The Commission notes that the net cost to the BBC of providing the Digital Curriculum will be covered by the television licence fee²; the latter is a mandatory measure imposed by the State. Furthermore, such licence fee funding became available for the purpose of the Digital Curriculum only once formal authorisation was obtained from the Secretary of State. The compulsory legal nature of the licence fee and the express approval by the State for the financing of the service from licence fee funds unequivocally establish the use of state resources.

¹ Judgment of the Court of 18 June 1998 in case C-35/96, *Commission of the European Communities v Italian Republic*, ECR I-3851, paragraph 36.

² Commission decision N 631/2001 para 20: According to Article 16(1)(a) of the Charter, the Secretary of State pays the licence fee revenue to the BBC out of money provided by the Parliament. It can be added that, even if the revenue, after collection by the BBC, would stay within the BBC budget the aid character would not change, as the revenue remains under public control, and therefore available to the competent national authorities. This is sufficient for it to be categorised as state resources.

Economic advantage and selectivity

- (22) The BBC would enjoy direct, unencumbered access to financing from the State and would benefit from a measure that is not available to other undertakings. It is important to consider whether such financing may be considered to be compensation for carrying out a public service and whether, in applying the criteria specified in the ‘Altmark’ judgement³ (‘Altmark’), the measure may escape classification as State aid under Article 87(1). These criteria are:
- first, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;
 - second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;
 - third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;
 - fourth, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.
- (23) The Commission considers, on the basis of the information available, that the fourth condition does not seem to be met in the case of the Digital Curriculum. The service was not awarded as a result of an open public procurement procedure. The BBC has arrived at the costs of its proposal using its own internal estimates. The UK authorities did not provide any information which would allow the Commission to determine whether these costs can be considered as corresponding to those of a typical undertaking and thus to consider that the fourth condition is fulfilled. Accordingly, the Commission cannot conclude that the measure in question meets all the criteria specified in the Altmark judgement in order to escape the qualification as State aid under Article 87(1).

Distortion of Competition

- (24) For the purpose of assessing the distortion of competition, the Commission notes that a market for electronic learning materials already exists. The BBC would benefit from direct funding that would not be available to other undertakings. The BBC’s brand coupled with free availability of material to the user threatens to distort competition in a market where there are incumbent, commercial players. The Commission recognises that the government’s schemes such as the funding of schools to purchase non-BBC material (see paragraph 9

³ Case C-280/00: paras 87 to 97

above) would alleviate the potential distortion of competition. This would not, however, eliminate the risk of distortion.

Affecting trade between Member States

- (25) The BBC would deliver to the education market entailing a potential distortion of competition. BBC's competitors in the U.K. also sell to other Member State markets. Furthermore, the ownership of these competitors may also extend to other Member States. The fact that the service is intended for students in the U.K. does not prevent an effect on intra-Community trade. As confirmed by the Court, the question of whether aid is capable of affecting trade between Member States does not depend on the local or regional character of the services provided or on the scale of the field of activity concerned. The scheme can thus be regarded as affecting trade between Member States.

Conclusion on the 87(1) assessment

- (26) As per paragraphs 19 to 25 above, it is concluded that the scheme involves state aid within the meaning of Article 87(1).

4. EXISTING AID

- (27) The UK Authorities in their notification have claimed that the scheme is 'existing aid' as the Licence Fee has existed since 1927.
- (28) Article 1(b) of the Council Regulation (EC) No 659/1999 stipulates that 'existing aid' includes aid, which existed in a Member State prior to its accession to the European Union. It thus follows that any aid scheme that existed in the U.K. prior to its accession to the European Union on 1 January 1973 should be considered to be existing aid.
- (29) According to Article 1(c) of the same regulation: 'new aid' shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid. The Court of First Instance's interpretation is that it is not 'altered existing aid' that must be regarded as new aid, but only the alteration as such that is liable to be classified as new aid⁴. Accordingly, it is only where the alteration affects the actual substance of the original scheme that the latter is transformed into a new aid scheme.
- (30) The BBC is a public corporation established under Royal Charter. The BBC was first incorporated under Royal Charter on 20 December 1926. Since, there have been successive Royal Charters governing the BBC. The concept of "other public services, whether or not broadcasting services" was introduced in the 1981 Charter; the use of licence revenues for these "other services" was provided for under the accompanying 1981 Agreement. The most recent legislation on the public service activities of the BBC is laid down in Articles 3(a) and 3(b) of the 1996 Charter. Article 3(b) refers to these "other services" as

⁴ Joined Cases T-195/01 and T-207/01: paragraph 109-111

“the Ancillary Services”⁵. The Digital Curriculum service is to be provided by the BBC as an “ancillary service” and, per the 1996 Agreement, will be financed from the existing licence fee system.

- (31) The licence fee regime under which the BBC receives funding is laid down in the Wireless Telegraphy Act 1949, the subordinate legislation made under that Act and the 1996 Agreement. The Commission has assessed some of the major changes in the licence fee regime to examine the claim of the UK Authorities that the scheme is existing aid.
- (32) The above, however, do not preclude a deeper examination for determination under ‘existing aid’ provisions by the Commission each time an activity is designated as an ‘ancillary service’.
- (33) The term ‘ancillary services’ remains open-ended both within the context of substance and geographical scope. It cannot, just by itself, provide credence to the notion of ‘existing aid’ in perpetuity irrespective of the type of service approved under Article 3(b) of the Charter.
- (34) A critical issue to be examined as part of the ‘existing aid’ assessment, therefore, is the nature of the service and its consistency with the scope of the Charter.
- (35) The Commission acknowledges that education has been an element of BBC’s public service throughout its existence. It further notes that it could be argued that the natural or logical evolution of a public service that manifests itself in an expansion of the scope of related activities and a deployment of more resources does not change the purpose of that public service.
- (36) The inclusion of “non television and radio” services as ancillary services of the BBC is a matter for UK legislation. The provision of educational material over the internet may be considered to be within the ‘existing aid’ nature of the scheme to the extent that it remains closely associated with the BBC’s “television and radio services”. If, however, the proposed “ancillary service” sheds this "close association" it can no longer be considered as one offering continuity within the existing scheme. The use of public funding to enter markets that are already developed and where the commercial players have had little or no exposure to the BBC as a competitor cannot be considered as maintaining the status quo regarding the nature of the scheme.
 - The Commission notes that although the proposed service builds on the educational traditions of the BBC and may be seen by some to be a logical and natural extension of the BBC’s activities, the Digital Curriculum is a digression from the various markets within which the BBC has been active. The Commission thus concludes that the approval by the Secretary of State

⁵ BBC 24 hours News decision (paragraphs 46-48): it is not for the Commission to pronounce on the terminology used in national legislation to define the provision of public services, nor to discuss the terminology of "public service" and "ancillary service" as defined in the Charter.

and the subsequent implementation of the Digital Curriculum would not qualify as ‘existing aid’ for state aid purposes.

5. ARTICLE 86(2) ASSESSMENT

- (37) According to Article 86 (2): Undertakings entrusted with the operation of services of general economic interest... shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.
- (38) The Court has consistently held that Article 86 provides for derogation and must therefore be interpreted restrictively.
- (39) In keeping with the Court’s interpretation of Article 86(2), in order to qualify for exemption, the Digital Curriculum needs to meet certain conditions:
- the Digital Curriculum must be a service of general economic interest and be clearly defined as such by the Member State;
 - the undertaking in question must be officially entrusted by the Member State with the provision of the service;
 - the application of Article 87(1) would prevent the performance of the entrusted service;
 - the 86(2) exemption must not affect the development of trade to an extent that would be contrary to the interests of the community.

5.1 The nature of the service and its definition

- (40) It is Member States who are primarily responsible for defining what they regard as services of general economic interest. This definition can only be subject to an examination and determination by the Commission for manifest error. Given that the service is a free educational service for schools and students the Commission considers that the UK Government has not made a manifest error by defining the Digital Curriculum service to be of general economic interest.
- (41) In every case, for the exception provided for by Article 86(2) to apply, the public service mission needs to be clearly defined and must be explicitly entrusted⁶. In so far as the description of the service is concerned, details have been provided in paragraphs 5-10 above. It is further noted that the Secretary of State approved the Digital Curriculum imposing various conditions (eighteen in all); One of the key conditions is that ‘...the service, taken as a whole, should be distinctive from and complementary to services provided by the commercial sector’. Other conditions impose stipulations related to the publication of BBC’s plans and its coverage of subjects and ‘learning outcomes’.

⁶ 2001/C 17/04: paragraph 22

- (42) The complainant has claimed that the some of the conditions imposed by the Secretary of State are vague and do not clearly define what is included in and excluded from the Digital Curriculum. Furthermore, the approval is not limited in time.
- (43) In response to the concerns raised by the Commission with the UK Authorities regarding the definition of the service, the UK Authorities have provided further clarifications to directly address any ambiguity that may have arisen while interpreting the Secretary of State’s approval. The Commission is of the view that these clarifications provide the level of definition and commitment expected with regard to a service of general economic interest.
- The Commission understands that “the commissioning plan” (“the Plan”), which is required to be published at least fifteen months before the launch of the Digital Curriculum service will set out the subjects to be covered during the first five years of the service. This five-year plan will be accompanied by explicit criteria for exclusion thus providing clarity for users and commercial providers of the subjects and/or learning outcomes that will not be provided by the BBC throughout the duration of the Plan. The Plan is intended to provide the parameters within which the BBC will operate so that any divergence from the scope of the Plan will be considered a breach of the Secretary of State’s approval.
 - Any licence fee funding for the scheme in excess of the £150m (at 2001/02 prices) or beyond 5 years after the date of the Commission’s approval of this notification will be the subject of a new State aid notification by the UK Authorities.
- (44) In view of paragraphs 41 to 43 above, the Commission considers that for the purpose of Article 86(2) the service has been adequately and clearly defined.

5.2 Entrustment

- (45) For the purpose of entrustment it is important to examine the statutory instruments that empower the Secretary of State in designating and approving a service under the public service remit of the BBC.
- (46) Article 3(b) of the Charter provides that: “subject to the prior approval of Our Secretary of State or within such limits as may be agreed from time to time between the [BBC] and Our Secretary of State, to provide, as public services other services whether or not broadcasting or programme supply services (such services being referred to as “the Ancillary Services”)”.
- (47) The Secretary of State has published Guidelines with respect to the approval of proposals by the BBC for new public services. The Secretary of State approved the service and the funding thereof in accordance with the provisions of the Charter and the Agreement.
- (48) As the Commission explained already in paragraphs 69 and 70 of the BBC News 24 decision, “... the legislative and administrative framework defining the public service mission and entrusting it to the BBC leaves room for doubt as to

what is defined as a public service and what is not. In particular, it notes that there is no clear definition of the services BBC can provide as ancillary services. Also, it appears that, initially, it is for the BBC to propose to the Secretary of State new services that may be provided as ancillary or commercial services. It is only subsequently that the Government, through the giving or withholding of consent by the Secretary of State, may or may not entrust the provision of that service to the BBC. Notwithstanding this, for the purposes of assessment under Article 86(2), the ways and means by which the entrustment of the public service is made ... are not decisive. What is decisive in this respect is the fact that, eventually, there is an official entrustment to the BBC of the task of providing a specific public service". The same reasoning is applicable to the case at hand.

- (49) The Commission considers therefore that for the purpose of Article 86(2) the formal approval of the Digital Curriculum by the Secretary of State is an official entrustment of the service.

5.3 Necessity and proportionality of State financing.

- (50) Under its public service remit the BBC is not able to charge homes and schools for the delivery of the new service. It is therefore clear that these services cannot be provided without receiving adequate financing from the State.
- (51) To ensure proportionality of the funding, financing beyond the net costs of the public service should be prevented. With regard to the level of compensation the Commission notes that, in effect, the approval allows the BBC to spend £150 million (at 2001/2002 prices) of license fee funds on the Digital Curriculum over a period of five years from the date of approval by the Commission.
- (52) The Commission notes that the level of expenditure formed part of the BBC's proposal to the Government and that the review by the Secretary of State resulted in concomitant approval of both the service proposed and the monies required for the implementation of the service. The Government in approving the funding has acknowledged that the service as proposed will cost up to £170m (at 2001/02 prices). However, the funding from the license fee has been capped at £150 million (at 2001/02 prices). Revenues compatible with the BBC's Fair Trading Commitment and the Commercial Policy Guidelines (see paragraph 69 below) would fund the extra £20million.
- (53) With regard to BBC's commercial and public service activities, the Commission notes that the BBC complies with the obligation of the Transparency Directive in keeping separate accounts for its commercial and public service activities. The Commission also notes that although the BBC determines its funding requirements for a proposal itself these are subject to approval.
- (54) The non-public service activities are performed by separate commercial subsidiaries of the BBC and the accounts of these subsidiaries are published in accordance with the UK Companies Acts. Article 7 of the Charter lays down the responsibilities of the Board of Governors, which has to assure that the activities of the BBC are carried out as foreseen in the Charter, the Agreement and (with

regard to their non-public service activities) the Fair Trading Commitment. For this purpose, the Board of Governors has to establish and maintain an Audit Committee. Furthermore, the Office of Fair Trading in the UK regulates the non-public service activities of the BBC.

- (55) In the case of an ex-ante assessment, such as the present notification, the Commission has to rely on the legal Acts to prevent cross-subsidisation and abuse of the compensation. Article 7(1)(g) of the Charter provides that the non-public service activities have to be funded, operated and accounted for separately from the public services. Furthermore, the accounts of the BBC are audited and submitted to the Secretary of State and the Parliament.
- (56) Moreover, the net profits from any commercialisation linked to or deriving from the public service have to be accounted for in arriving at the net costs of the public service. The BBC's Fair Trading Commitment commits the BBC to ensuring that public funds are not diverted to commercial activities. Furthermore, the BBC has adopted detailed commercial policy guidelines, which apply to all commercial activities of the BBC.
- (57) The Fair Trading Commitment and the Commercial Policy Guidelines require that the commercial subsidiaries have to pay fair charges for inputs (such as facilities and resources, presentation and promotion services and accommodation) they receive from the public service entities of the BBC organisation. These charges should be in line with the external market price for such inputs. The BBC has to provide evidence from time to time that the charges made by the BBC are in line with the prices prevailing in the external market.
- (58) The Commission considers that the above mechanisms in principle safeguard that the advantages derived from the public service mission are taken into account properly when calculating the net public service costs. Such mechanisms, on condition that they will be properly applied and monitored on an ex-post basis, would prevent, in principle, cross-subsidisation from the public funded parts of the BBC to its commercial entities.

5.4 Effect contrary to the interest of the community

- (59) In paragraphs 24 and 25 above it has been established that the Digital Curriculum will potentially distort competition and affect trade between member states. As a mitigating factor the Commission notes the various other initiatives by the UK Government (see paragraph 9 above), which aim at reducing the effect of the measures in question on competition and trade.
- (60) As it is currently laid out the Digital Curriculum scheme will be funded for five years from the date of the Commission's approval. In the instance that the approval is granted in 2003, the consequent funding, capped at £150m from the license fee and £170m overall, would extend up until 2008.
- (61) With regard to England, the largest market in the United Kingdom, the Commission notes that the Secretary of State, in giving her approval, took account of the electronic learning credits to schools as part of Curriculum

Online (see paragraph 9 and 10 above). The Commission understands from the Department for Education and Skills (DfES) that the latter: “ ...is unable to commit funding beyond 2006 (we have three-year spending cycles for all Government funding). However, Government policy is to develop a dynamic market in this area and our intention will be to use our best endeavours to bid for the resources to maintain and ensure this”.

- (62) Also, it should be taken into account that according to Articles 3 and 149 of the Treaty quality education is one of the objectives of the Community. In all, the Commission does not consider that the State financing of the services in question would affect the development of trade within the Community to an extent contrary to the common interest.
- (63) Therefore, the Commission concludes that the scheme meets all the conditions for the Article 86(2) derogation.

6. Decision

The Commission has accordingly decided:

- to raise no objections to the scheme.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Mario Monti
Member of the Commission