

Neelie Kroes
European Commissioner for Competition
European Commission
B-1049 Brussels
BELGIUM

5 January 2007

Dear Mrs Kroes,

Becta's Learning Platform Framework Agreement

I am writing to ask you to investigate a public sector procurement which I believe contravenes OJEU regulations and also stifles competition in the UK market for software in schools.

The Learning Services Framework Agreement, now more commonly called the Learning Platform Procurement has been run by the British Educational Communications and Technology Agency (Becta), an agency of the British Department for Education and Skills (DfES).

Most, if not all of the ten companies awarded framework contracts do not meet significant mandatory criteria referred to by the contract notice. Becta, knowing this to be the case, made no effort to enforce these criteria. I have been advised by the British Office of Government Commerce that this situation is very likely to constitute a breach of OJEU regulations, under which the procurement was run.

The Learning Platform Procurement Contract Notice was filed on 28th February and tenders were required to be submitted by 31st July. The requirements document and its associated technical specifications were drafted in an industry consultation which ran between March and June. The tenders have been assessed over the autumn and the winners were announced on 22nd December. The British government is supplying £40 million to Local Authorities to acquire learning platforms, with the strong recommendation that they select successful candidates from Becta's approved list. Schools wishing to use platforms not selected by their local authority are free to do so but must find the money from other budgets.

Technical background

Before referring to the technical specifications, I should explain that the most significant set of technical standards for interoperability between learning platforms and learning content is referred to as the Shareable Content Object Reference Model (SCORM), published by Advanced

Distributed Learning (ADL), a consortium associated with the US government. There are two distinct parts to the interoperability standards: 'content packaging' refers to how content can be transferred between different systems; and the 'run-time' refers to how learning content interacts with a learning platform as it is used, exchanging data to track student performance, manage bookmarking, initialisation, student preferences, and provide communication services. Content packaging is a fairly simple standard which most learning platforms support, while the run-time requires more advanced functionality.

The contract notice states that 'Becta will mandate a standard set of core functions including integration and interoperability standards', which were provided in a separate document, the Learning Platform Requirements, finalized in mid June. This was associated with a third document, the technical specifications, containing 44 requirements, some marked as mandatory, some as recommended. Further details of mandatory specifications were included in three appendices.

The SCORM run-time

The technical specifications describe requirement 3 as follows (the 'M' in the second column standing for 'Mandatory'):

Requirement name	O	Description	Specifications and notes
R3: Load content objects	M	It shall be possible to load, store and make sharable content objects available to users. Run-time interactions with content objects should be supported. This includes being able to load bundled resources (content packages) and unpack them.	<p>Mandatory: several specifications defined by SCORM shall be supported.</p> <p>Recommended: other SCORM specifications should be supported.</p> <p>(See Appendix 1 SCORM for details.)</p> <p>Content objects could be imported as part of a package rather as individual files.</p>

While the title of this requirement, 'Load content objects' suggests that it should refer to content packaging, the description column also says that 'Run-time interactions with content objects should be supported'. The specifications column refers to Appendix 1, which includes the following:

A learning platform:

- shall conform to the IEEE ECMAScript API for Content to Runtime Services Communication (1484.11.2-2003), and in particular be interoperable with the SCORM 2004 Run-Time Environment API calls as follows:
 - o Initialize
 - o Terminate
 - o GetValue
 - o SetValue
 - o Commit
 - o GetLastError
 - o GetErrorString
 - o GetDiagnostic.

- shall conform to the IEEE Data Model for Content to Learning Management System Communication (IEEE 1484.11.1-2004) and support the following elements:

[omission: a complete listing of all SCORM top-level data elements copied from the SCORM documentation]

Providers should be able to provide details of how they meet appropriate SCORM self-certification tests.

The SCORM data elements form a hierarchical list of identifiers for particular types of information. To explain by example, a learning object wishing to report that a student had scored 8 out of 10 might make use the following code, with references to two different data elements:

```
SetValue("core.score.raw", 8);
SetValue("core.score.max", 10);
```

Simple sequencing

A relatively new specification, Simple Sequencing, allows content publishers to assemble structures of content from individual elements. The protocol specifies how students should navigate between 'learning objects', depending on performance, competency, preference or other variables. The mandatory requirement to support simple sequencing was added to the requirements document fairly late in the consultation process, as a response to my point that as the BBC's Digital Curriculum was packaged in a format using Simple Sequencing, platforms which did not support the standard would not be able to load and play BBC content as intended, resulting in a loss of credibility for the Becta kitemark.

The technical specifications describe requirement 19 as follows:

Requirement name	O	Description	Specifications and notes
R19: Sequence resources or activities	M	Users shall be able to create structured units and sequence learning resources or activities.	<p>Recommended:</p> <ol style="list-style-type: none"> 1. IMS Learning Design v1.0 2. IMS Simple Sequencing v1.0. <p>(Some aspects of sequencing and navigation are mandatory as part of managing content objects see R3 and Appendix 1 SCORM)</p> <p>The platform shall be able to sequence discrete resources based on a system of rules. The platform shall be able to demonstrate that different resources are presented to users given different values or rules. 'Presented' means that the content is run automatically or is displayed to the user as the next piece of content.</p>

While requirement 19 states that platforms must have the capability to sequence content, it does not specify any mandatory standards in order to achieve this. As it goes on to note, however, there are mandatory specifications included in requirement 3 and these are laid out again in appendix 1, as follows (highlighting is mine):

A.1.3 Sequencing and navigation

The following are given as draft in SCORM 2004, but there is expected to be a large number of learning resources that may require include sequencing and navigation. Therefore support for the SCORM 2004 sequencing and navigation is mandatory. Further clarification is expected as content requirements change.

A learning platform shall support:

- [SCORM 2004 Sequencing Extensions XML XSD Version 1.0 Draft \[http://www.adlnet.gov/downloads/263.cfm\]](http://www.adlnet.gov/downloads/263.cfm)
- [SCORM 2004 Navigation Extensions XML XSD Version 1.1 Draft \[http://www.adlnet.gov/downloads/264.cfm\]](http://www.adlnet.gov/downloads/264.cfm).

Although the drafting of the requirement in the main body of the text is a little convoluted, the appendix containing the key detail is unambiguous: providers are required to conform with all function calls and data elements in the SCORM run-time, as well as IMS simple sequencing and navigation. The ADL self-certification tests published by ADL allow conformance to these standards to be tested very simply and the specifications document requires tenderers to provide evidence that they have passed these tests.

Reasons for believing that the mandatory requirements have not been met

I opposed the procurement framework during the consultation on the grounds that approved suppliers would be required to provide a very wide range of different types of software across the school and that such a regime would exclude innovative solutions provided by small companies addressing particular niches. On the basis of its past record, I was sceptical of Becta's commitment to its professed aim of improving interoperability. On the contrary, I believe that the whole procurement represents an attempt by Becta to avoid having to take responsibility for its long-standing failure to provide a robust framework for interoperability. If all software systems within a school or Local Authority are contracted to a single provider, the need for interoperability may appear less pressing. These suspicions were confirmed by the Becta spokesman's statement during the consultation to the effect that they were not interested in interoperability, only functionality.

I sought and was given a meeting with Becta's Chief Executive on 6th October, at which I was assured that the mandatory requirements would be rigorously enforced and that the complete ADL self-certification suite of software testing tools would be used.

I am familiar with several of the ten companies which were awarded framework contracts. Their products do not support either run-time or simple sequencing; and it is very unlikely that they have managed to add these advanced functions in the space of a few months. My substantive evidence that the mandatory conditions were not even evaluated is attached in a confidential annex to this letter.

Significance for the BBC's Digital Curriculum

You will be aware of the controversy surrounding the BBC's Digital Curriculum (DC). Following an intervention by the European Court, the DC was allowed to proceed on the basis of a set of conditions imposed by the Department for Culture, Media and Sport (DCMS) in January 2003. In spite, again, of weak drafting, it is clear that a central intention of the DCMS conditions was that the BBC should not develop its own management system beyond a rudimentary level and that DC content should interoperate fully with third-party management systems.

The BBC did not consult openly with third-party platform vendors until June 2006, with initial content being released over the autumn. This content supports content packaging fully but run-time interoperability only superficially. ADL mandates content objects to support only two function calls, *Initialize* and *Terminate*, used to open and finish a run-time session. Although the BBC supports these calls, all data is passed, not to the hosting platform using the channel thus opened, but with proprietary protocols back to its own management system, which has been developed considerably beyond the point allowed by any reasonable interpretation of the DCMS conditions. I sent a paper describing these issues to Stephen Crowne at Becta and it appears that action has been taken because I understand from an internet news site that roll-out of the DC has been suspended pending a review of its interoperability.

Although the BBC is clearly not blameless, it is placed in a difficult position by Becta's failure over many years to implement robust standards for interoperability. The BBC wants to produce innovative content which supports run-time interoperability and sequencing but few if any of the platforms approved by Becta appear to support these functions. It must appear to the BBC that it has little alternative but to develop its own management system. The paradox is that Becta, the agency chiefly responsible for policing the DC, itself bears a substantial part of the responsibility for the BBC's failure to embrace interoperability more fully. I am concerned that the Content Advisory Board, established by the DCMS to monitor these issues, which used to meet four times and publish two reports every year, appears not to have met since March.

John Pugh's Early Day Motion

On 21st November, a Liberal Democrat MP submitted in the British House of Commons an Early Day Motion criticising the learning platform procurement framework. The motion has to date attracted the support of one hundred Members of Parliament. Mr Pugh was lobbied by supporters of the open source platform Moodle which, along with small companies, has been excluded from the procurement by the financial criteria and the requirement to provide a complete suite of tools.

Becta responded to Pugh's EDM by saying that 'We strongly reject the claims made by John Pugh that it is denying schools the opportunity to

benefit from free and open source software.' Although strictly true, Becta's response is disingenuous, as it is clear that the injection of £40 million into Local Authority budgets will seriously disadvantage suppliers whose products are not on the framework. Becta argues that approved suppliers may still sub-contract to SME or open-source solutions, although they will clearly prefer to develop their own solutions, allowing them to use proprietary interactions between inter-dependent components of what will become local monopolies.

Conclusion

I am asking you to take action in this case for the following reasons:

1. The failure to enforce selection criteria described in the specifications documents as mandatory reveals that there is a clear difference between the stated and effective selection criteria. This contravenes the core principles of the OJEU regulations.
2. The failure even to attempt to evaluate these mandatory criteria, even when an easy means of doing so was to hand; and their insistence that they were applying the criteria when they were not, reveals bad faith on the part of the awarding body.
3. The insistence that many different categories of software within a particular school or Local Authority should all be supplied by a single supplier has serious anti-competitive implications which has alarmed a significant section of the British House of Commons.
4. The mismanagement of this procurement reflects a long-standing failure on the part of the British government to implement robust standards for interoperability in British schools, frustrating the development of a competitive marketplace and undermining the ability of the BBC to meet its obligations for interoperability.

I have posted a range of supporting documentation which you may also like to consider at www.alphalearning.co.uk/ojeu.htm.

I would like to thank you for considering this submission and I look forward to receiving your response.

Yours sincerely,

Crispin Weston
Managing Director

Enclosure: Becta's Technical Specifications document.