

SCHEDULES

SCHEDULE 2

EXCLUSIONS: OTHER COMPETITION SCRUTINY

PART III

BROADCASTING

The Broadcasting Act 1990 (c. 42)

- 4 (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 194A (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), for subsections (2) to (6), substitute—
- “(2) If, having sought the advice of the Director, it appears to the Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.
- (3) The conditions are that—
- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
 - (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
 - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
 - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).
- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
- (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;

Status: This is the original version (as it was originally enacted).

- (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
 - (c) make a declaration, even though he has notified the Director of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the Director of his decision.
- (7) The Director may not exercise any Chapter III powers in respect of a relevant agreement, unless—
- (a) he has notified the Secretary of State of his intention to do so; and
 - (b) the Secretary of State—
 - (i) has notified the Director that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
 - (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) If the Director proposes to exercise any Chapter III powers in respect of a relevant agreement, he must give the Secretary of State particulars of the agreement and such other information—
- (a) as he considers will assist the Secretary of State to decide whether to exercise his powers under this section; or
 - (b) as the Secretary of State may request.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
 - “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;
 - “Director” means the Director General of Fair Trading;
 - “regional Channel 3 licence” has the same meaning as in Part I;
- and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”