
Changes to legislation: Competition Act 1998, Part III is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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 ^{M1}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;

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- (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.”

Marginal Citations

M1 1976 c. 34.

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Networking arrangements under the Broadcasting Act 1990 (c.42)

- 5 [F1(1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent that they—
- (a) have been approved for the purposes of licence conditions imposed under section 291 of the Communications Act 2003; or
 - (b) are arrangements that have been considered under Schedule 4 to the Broadcasting Act 1990 and fall to be treated as so approved;
- nor does that prohibition apply in respect of things done with a view to arrangements being entered into or approved to the extent that those things have effect for purposes that are directly related to, and necessary for compliance with, conditions so imposed.]
- (2) [F2OFCOM] must publish a list of the networking arrangements which in their opinion are excluded from the Chapter I prohibition by virtue of sub-paragraph (1).
- (3) [F3OFCOM] must—
- (a) consult the [F4CMA] before publishing the list, and
 - (b) publish the list in such a way as they think most suitable for bringing it to the attention of persons who, in their opinion, would be affected by, or likely to have an interest in, it.
- [F5(4) In this paragraph “networking arrangements” has the same meaning as in Part 3 of the Communications Act 2003.]

Textual Amendments

- F1** Sch. 2 para. 5(1) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 291(3)**, 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)
- F2** Words in Sch. 2 para. 5(2) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(6)(a)**, 411(2) (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F3** Words in Sch. 2 para. 5(3) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), **ss. 371(6)(b)**, 411(2) (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F4** Word in Sch. 2 para. 5(3)(a) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 5 para. 54** (with s. 28); S.I. 2014/416, art. 2(1)(d) (with [Sch.](#))
- F5** Sch. 2 para. 5(4) substituted (29.12.2003) by [Communications Act 2003 \(c. 21\)](#), **ss. 291(4)**, 411(2) (with [Sch. 18](#)); S.I. 2003/3142, art. 3(1), [Sch. 1](#) (with art. 11)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket Amendment words substituted by [2005 c. 4 Sch. 11 para. 5](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 31G-31L and cross-heading inserted by S.I. 2019/93, reg. 8A (as inserted) by [S.I. 2019/1245 reg. 3](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 46(3)(ha)(hb) inserted by S.I. 2019/93, reg. 14(d) (as inserted) by [S.I. 2019/1245 reg. 5](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 47(1)(ca) inserted by S.I. 2019/93, reg. 15(b) (as substituted) by [S.I. 2019/1245 reg. 6](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 60A(10) inserted by [2023 c. 28 s. 6\(10\)](#)
- Sch. 6A para. 1A inserted by S.I. 2019/93, reg. 29A(2) (as inserted) by [S.I. 2019/1245 reg. 7](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- Sch. 6A Pt. 3 inserted by S.I. 2019/93, reg. 29A(4) (as inserted) by [S.I. 2019/1245 reg. 7](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)