



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART X

#### MISCELLANEOUS AND GENERAL

##### *Application of competition legislation*

#### **[<sup>F1</sup>194A Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.]**

- (1) In this section a “relevant agreement” means an agreement—
- (a) which is made between all holders of regional Channel 3 licences for securing the appointment by them, in accordance with conditions included in their licences by virtue of [<sup>F2</sup>section 280 of the Communications Act 2003], of a single body corporate to be the appointed news provider for the purposes of [<sup>F3</sup>that section], or
  - (b) which is made between them and the body corporate appointed to be the appointed news provider for the purposes of [<sup>F3</sup>that section] for purposes connected with the appointment.

[ If, having sought the advice of the [<sup>F5</sup>CMA][<sup>F6</sup>and OFCOM], it appears to the Secretary  
<sup>F4</sup>(2) 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—

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*Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Section 194A. (See end of Document for details)*

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- (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 [F7]section 280 of the Communications Act 2003], 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 [F8]that section of that Act of 2003].
- (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;
  - (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 [F9CMA][F10]or OFCOM or both of them] 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 [F9CMA][F11]and OFCOM] of his decision.
- (7) [F12]Neither the [F9CMA] nor OFCOM may] exercise any Chapter III powers in respect of a relevant agreement, unless—
  - [F13](a) the Secretary of State has been notified by the [F9CMA] or (as the case may be) by OFCOM of its or their intention to do so; and]
  - (b) the Secretary of State—
    - (i) has notified the [F9CMA][F14]and OFCOM] 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) [F15]Where the [F9CMA] or OFCOM is or are proposing to exercise any Chapter III powers in respect of a relevant agreement, it or they must give the Secretary of State particulars of the agreement and such other information—
  - (a) it considers or (as the case may be) they consider 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 [F16]of the [F17]CMA] and of OFCOM under] Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;
  - [F18]“CMA” means the Competition and Markets Authority;]
  - [F19] ...

*Changes to legislation: There are currently no known outstanding effects for the Broadcasting Act 1990, Section 194A. (See end of Document for details)*

F20

“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.]]

#### Textual Amendments

- F1** Shoulder heading and s. 194A inserted (24.7.1996) by 1996 c. 55, s. 77(1)(2) (with s. 43(1)(6))
- F2** Words in s. 194A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(2)(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F3** Words in s. 194A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(2)(b), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F4** S. 194A(2)-(11) substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), Sch. 2 Pt. III para. 4(2); S.I. 2000/344, art. 2, Sch.
- F5** Word in s. 194A(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 72(2) (with art. 3)
- F6** Words in s. 194A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(3), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F7** Words in s. 194A(3)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(4)(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F8** Words in s. 194A(3)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(4)(b), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F9** Word in s. 194A(5)-(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 72(2) (with art. 3)
- F10** Words in s. 194A(5)(c) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(5), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F11** Words in s. 194A(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(3), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F12** Words in s. 194A(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(6)(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F13** S. 194A(7)(a) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(6)(b), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F14** Words in s. 194A(7)(b)(i) inserted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(3), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F15** Words in s. 194A(8) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(7), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F16** Words in s. 194A(9) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(8), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F17** Word in s. 194A(9) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 72(3)(a) (with art. 3)

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**Changes to legislation:** There are currently no known outstanding effects for the Broadcasting Act 1990, Section 194A. (See end of Document for details)

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- F18** Words in s. 194A(9) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 72\(3\)\(c\)](#) (with art. 3)
- F19** Words in s. 194A(9) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 72\(3\)\(b\)](#) (with art. 3)
- F20** Words in s. 194A(9) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 24(7)(d) (i), [Sch. 26](#); S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**Changes to legislation:**

There are currently no known outstanding effects for the Broadcasting Act 1990, Section 194A.