

## 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;

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*Status: This is the original version (as it was originally enacted).*

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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.”

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

- 5 (1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent to which they—
  - (a) are subject to Schedule 4 to the Broadcasting Act 1990 (competition references with respect to networking arrangements); or

- (b) contain provisions which have been considered under that Schedule.
- (2) The Independent Television Commission (“ITC”) 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) The ITC must—
  - (a) consult the Director 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.
- (4) In this paragraph “networking arrangements” means—
  - (a) any arrangements entered into as mentioned in section 39(4) or (7)(b) of the Broadcasting Act 1990, or
  - (b) any agreements—
    - (i) which do not constitute arrangements of the kind mentioned in paragraph (a), but
    - (ii) which are made for the purpose mentioned in section 39(1) of that Act, or
  - (c) any modification of the arrangements or agreements mentioned in paragraph (a) or (b).