



Communications Act 2003

2003 CHAPTER 21

PART 5

COMPETITION IN COMMUNICATIONS MARKETS

CHAPTER 2

MEDIA MERGERS

Extension of special public interest regime

378 Extension of special public interest regime for certain media mergers

(1) In section 59 of the Enterprise Act 2002 (c. 40) (intervention by Secretary of State in special public interest cases), for subsections (3) and (4) (definition of “special merger situation”) there shall be substituted—

“(3) For the purposes of this Part a special merger situation has been created if—

- (a) the condition mentioned in subsection (3A) is satisfied; and
- (b) immediately before the enterprises concerned ceased to be distinct—
 - (i) the conditions mentioned in subsection (3B) were satisfied;
 - (ii) the condition mentioned in subsection (3C) was satisfied; or
 - (iii) the condition mentioned in subsection (3D) was satisfied.

(3A) The condition mentioned in this subsection is that—

- (a) no relevant merger situation has been created because of section 23(1)(b) and (2)(b); but
- (b) a relevant merger situation would have been created if those enactments were disregarded.

(3B) The conditions mentioned in this subsection are that—

Status: Point in time view as at 29/12/2003.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Communications Act 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (a) at least one of the enterprises concerned was carried on in the United Kingdom or by or under the control of a body corporate incorporated in the United Kingdom; and
 - (b) a person carrying on one or more of the enterprises concerned was a relevant government contractor.
- (3C) The condition mentioned in this subsection is that, in relation to the supply of newspapers of any description, at least one-quarter of all the newspapers of that description which were supplied in the United Kingdom, or in a substantial part of the United Kingdom, were supplied by the person or persons by whom one of the enterprises concerned was carried on.
- (3D) The condition mentioned in this subsection is that, in relation to the provision of broadcasting of any description, at least one-quarter of all broadcasting of that description provided in the United Kingdom, or in a substantial part of the United Kingdom, was provided by the person or persons by whom one of the enterprises concerned was carried on.”
- (2) After subsection (6) of that section there shall be inserted—
- “(6A) The Secretary of State may by order amend the conditions mentioned in subsection (3)(b)(ii) and (iii).”
- (3) After that section there shall be inserted—

“59A Construction of conditions in section 59(3C) and (3D)

- (1) For the purpose of deciding whether the proportion of one-quarter mentioned in section 59(3C) or (3D) is fulfilled with respect to—
- (a) newspapers of any description, or
 - (b) broadcasting of any description,
- the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate.
- (2) References in section 59(3C) to the supply of newspapers shall, in relation to newspapers of any description which are the subject of different forms of supply, be construed in whichever of the following ways the decision-making authority considers appropriate—
- (a) as references to any of those forms of supply taken separately;
 - (b) as references to all those forms of supply taken together; or
 - (c) as references to any of those forms of supply taken in groups.
- (3) For the purposes of subsection (2) the decision-making authority may treat newspapers as being the subject of different forms of supply whenever—
- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
 - (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.
- (4) References in section 59(3D) to the provision of broadcasting shall, in relation to broadcasting of any description which is the subject of different forms

Status: Point in time view as at 29/12/2003.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Communications Act 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

of provision, be construed in whichever of the following ways the decision-making authority considers appropriate—

- (a) as references to any of those forms of provision taken separately;
 - (b) as references to all those forms of provision taken together; or
 - (c) as references to any of those forms of provision taken in groups.
- (5) For the purposes of subsection (4) the decision-making authority may treat broadcasting as being the subject of different forms of provision whenever—
- (a) the transactions concerned differ as to their nature, their parties, their terms or their surrounding circumstances; and
 - (b) the difference is one which, in the opinion of the decision-making authority, ought for the purposes of that subsection to be treated as a material difference.
- (6) The criteria for deciding when newspapers or broadcasting can be treated, for the purposes of section 59, as newspapers or broadcasting of a separate description shall be such as in any particular case the decision-making authority considers appropriate in the circumstances of that case.
- (7) In section 59 and this section “provision” and cognate expressions have the same meaning in relation to broadcasting as in Part 3 of the Communications Act 2003; but this subsection is subject to subsections (4) and (5) of this section.”

Commencement Information

II S. 378 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

379 Adaptation of role of OFT in special public interest regime

- (1) Section 61 of the Enterprise Act 2002 (c. 40) (initial investigation and report by OFT in special public interest cases) shall be amended as follows.
- (2) In subsection (3)(b) (report must include summary of representations about considerations specified in section 58) after the word “concerned” there shall be inserted “ (other than a consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C)) ”.
- (3) In subsection (4) for the words “59(4)(b)” there shall be substituted “ 59(3B)(b) ”.
- (4) After subsection (4) there shall be inserted—
 - “(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any consideration which—
 - (a) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and
 - (b) is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62.”

Status: Point in time view as at 29/12/2003.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to Communications Act 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

I2 S. 379 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

380 Additional investigation and report by OFCOM: special public interest cases

After section 61 of the Enterprise Act 2002 (initial investigation and report by OFT in special public interest cases) there shall be inserted—

“61A Additional investigation and report by OFCOM: certain media mergers

- (1) Subsection (2) applies where—
 - (a) the Secretary of State has given a special intervention notice in relation to a special merger situation; and
 - (b) the special intervention notice mentions any consideration which, at the time of the giving of the notice, was specified in section 58(2A) to (2C).
- (2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.
- (3) The report shall contain—
 - (a) advice and recommendations on any consideration which—
 - (i) is mentioned in the special intervention notice concerned and, at the time of the giving of that notice, was specified in section 58(2A) to (2C); and
 - (ii) is or may be relevant to the Secretary of State’s decision as to whether to make a reference under section 62; and
 - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this section.”

Commencement Information

I3 S. 380 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

Status:

Point in time view as at 29/12/2003.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to Communications Act 2003. Any changes that have already been made by the team appear in the content and are referenced with annotations.