

**dti**

**INTERVENTION IN MEDIA  
MERGERS**

Draft Guidance on the operation  
of the public interest merger  
provisions relating to newspaper  
and other media mergers under  
Section 106A of the Enterprise  
Act 2002

CONSULTATION DOCUMENT

DECEMBER 2003

**dti**

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

# **ENTERPRISE ACT 2002: PUBLIC INTEREST INTERVENTION IN MEDIA MERGERS**

## **Executive Summary**

This consultation document seeks views on the guidance the Secretary of State for Trade and Industry proposes to issue on the consideration of media public interest merger cases under the Enterprise Act 2002 (under provisions inserted into that Act by the Communications Act 2003). The introduction to the guidance explains the background to this subject in more detail.

Merger law was reformed by the Enterprise Act 2002, which came into force on 20 June 2003. This took Ministers out of the vast majority of merger cases and left them to be dealt with by the competition authorities, on the basis of a competition test. But the Act allows Ministers to intervene in merger cases which raise specified public interest considerations. The only consideration specified was national security.

The Communications Act 2003 added new public interest considerations applying to mergers involving newspaper enterprises and broadcasting enterprises. Newspaper mergers were left untouched by the Enterprise Act – the special newspaper regime in the old Fair Trading Act still applies, until replaced by the new Communications Act provisions on 29 December – because the Government wished to consider the whole issue of media regulation and media ownership in the Communications Act.

So the Enterprise Act procedures allowing for intervention by Ministers can in future be used not just in any national security cases but also in any cases where the new media public interest considerations may be relevant. The assessment of mergers on competition grounds will continue to be the responsibility of the competition authorities – the Office of Fair Trading and the Competition Commission.

The Enterprise Act 2002, as amended, envisages that the Secretary of State may publish advice and information explaining the media public interest considerations specified in sections 58(2A) to (2C) of the Act and indicating how these provisions are expected to operate. Accordingly, this guidance seeks to explain the new legislation and the procedures applying to mergers involving newspapers or broadcast media enterprises, and to cross-media mergers involving both broadcast media enterprises and newspaper enterprises.

The newspaper sections of the guidance follow the earlier outline guidance issued during the passage of the Communications Bill through Parliament in emphasising the continuity of assessment of newspaper mergers on public interest grounds between the current regime in the Fair Trading Act 1973 and the new regime now provided in the Enterprise Act 2002, notwithstanding that the procedures are very different. As regards the broadcasting and cross-media public interest considerations, the guidance confirms that, as Ministers indicated to Parliament when bringing forward the relevant amendments to the Bill, intervention will normally take place only where media ownership rules have been completely removed by the Communications Act 2003. The guidance has been drawn up following detailed discussions with the Department for Culture, Media and Sport, the Office of Fair Trading, the Competition Commission, the Independent Television Commission and the Office of Communications, although this does not mean they will have no comments on the draft guidance.

The proposed guidance should speak for itself and there are no particular sections of the document that the Department wishes to draw to consultees' attention. We would, however, welcome comments on it either of a general nature or on any specific points. In particular, it would be helpful to have views on any possible ambiguities in the text or on areas omitted that should have been covered. We would also particularly value comments on section 7 of the guidance dealing with broadcasting and cross-media mergers, since this was not covered in the earlier outline guidance and there are no real precedents as to how to analyse mergers against the background of these public interest considerations.

## **Responses**

You can respond to this consultation:

by e-mail to:

[Anthony.Pygram@dti.gsi.gov.uk](mailto:Anthony.Pygram@dti.gsi.gov.uk)

by post to:

Anthony Pygram  
Consumer and Competition Policy Directorate  
Room 635  
Department of Trade and Industry

1 Victoria Street  
London  
SW1H 0ET  
Tel: 0207 215 6954  
Fax: 0207 215 6565

### **Closing date**

Responses should be received by 12 March 2004.

A summary of the consultation responses and outcome will be provided on [www.dti.gov.uk](http://www.dti.gov.uk) by 16 April 2004.

### **Confidentiality**

Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response or your name to be made public, you must indicate in your response what you wish us to keep confidential. Any e-mail response sent from a corporate system may carry an automatically generated notice stating that the content of the message should be treated as confidential. Where you do not wish your views to be treated as confidential, please make it clear that such an automatically generated message does not apply.

### **Consultees**

This consultation document is available at [www.dti.gov.uk/ccp](http://www.dti.gov.uk/ccp). It is also being sent to the consultees listed at Annex A of this consultation document. Please tell us if you know of others who would be interested in receiving a copy.

### **Help with queries**

The Department seeks where possible to abide by the Cabinet Office's Code of Practice on Written Consultation. A copy of the Code's Consultation Criteria is at Annex B to this document. If you have any comments or complaints about the way that this consultation has been conducted, these should be sent to:

Philip Martin  
Department of Trade and Industry  
Better Regulation Team

Room 723  
1 Victoria Street  
London SW1H 0ET  
Philip.Martin@dti.gsi.gov.uk

## **TABLE OF CONTENTS**

### Proposed guidance on public interest intervention in media mergers

1. Introduction
2. Background to the media public interest considerations
3. Establishing jurisdiction
4. Procedures
5. Scope of the newspaper public interest considerations
6. Policy on intervention in newspaper public interest cases
7. Scope of the broadcasting and cross-media public interest considerations
8. Policy on intervention in broadcasting and cross-media public interest cases
9. Enforcement
10. Transitional Provisions for newspaper mergers
11. EC Merger Regulations

Annex A - Persons to whom this consultation document is being sent

Annex B - The Consultation Criteria

## **ENTERPRISE ACT 2002: PUBLIC INTEREST INTERVENTION IN MEDIA MERGERS**

### **Introduction**

- 1.1 This guidance gives advice and information on how certain media mergers may be considered by the Secretary of State in so-called media public interest cases.
- 1.2 The framework for the assessment of mergers under UK domestic law is set out in the Enterprise Act 2002, which came into force on 20 June 2003. The Act requires the Office of Fair Trading (the “OFT”) to obtain and keep under review information relating to its functions, including its merger functions, and imposes a duty on the OFT, except in certain specified circumstances, to refer to the Competition Commission for further investigation any relevant merger situations that it believes have resulted, or may be expected to result, in a substantial lessening of competition. Guidance on the roles of the OFT and the Competition Commission in relation to mergers is given in the OFT’s publications “*Mergers: Procedural Guidance (May 2003)*” and “*Mergers: Substantive Assessment Guidance (May 2003)*” (available at <http://www.of.gov.uk/>) and in the Competition Commission’s publications “*Rules of Procedure (June 2003)*” and “*Merger References: Competition Commission Guidelines (June 2003)*” (available at [www.competition-commission.org.uk](http://www.competition-commission.org.uk)), amongst others.
- 1.3 The Enterprise Act 2002 also permits intervention in certain cases by the Secretary of State (in practice, the Secretary of State for Trade and Industry). In these cases, the Secretary of State may take into account public interest factors other than the OFT’s competition assessment in deciding whether or not to refer a merger to the Competition Commission or to remedy any adverse effects of a merger. The Secretary of State is also able to intervene in special public interest cases where the standard merger jurisdictional thresholds relating to share of supply and turnover are not satisfied. There is no competition assessment in these special public interest cases. The only public interest considerations that the Secretary of State may take into account are specified in the Act. The Secretary of State retains the power to add further public interest considerations by statutory instrument.
- 1.4 The only public interest consideration specified when the Enterprise

Act 2002 completed its Parliamentary passage was national security, which includes public security (section 58(2)). However, the Communications Act 2003 amended the Enterprise Act 2002 by adding further public interest considerations relating to mergers involving media and newspaper enterprises. These new public interest considerations (referred to collectively in the legislation as the “media public interest considerations”) are set out in section 58(2A) to (2C) of the Enterprise Act. The public interest considerations set out in section 58(2A) and (2B) may apply in the context of mergers involving newspapers; these considerations are referred to in this guidance as the “newspaper public interest considerations”. The public interest considerations set out in section 58(2C) may apply in the context of mergers involving broadcast media enterprises or cross-media mergers involving both broadcast media enterprises and newspaper enterprises. For present purposes these public interest considerations are referred to as the “broadcasting and cross-media public interest considerations”. The term “media public interest considerations” is used, as in the legislation, to cover all the new public interest considerations.

- 1.5 The new regime also provides an advisory role for the Office of Communications (“OFCOM”) when the Secretary of State intervenes in a case on the grounds of media public interest considerations.
- 1.6 New section 106A of the Enterprise Act 2002 provides for the publication by the Secretary of State of advice and information explaining the public interest considerations specified in sections 58(2A) to (2C) of the Act (namely the media public interest considerations) and indicating how the Secretary of State expects these provisions to operate. Accordingly, the policies and procedures that will apply to mergers raising media public interest considerations form the subject matter of this guidance.
- 1.7 Although it is provided under statutory provisions and has authority as such, this guidance is not a substitute for the provisions of the Enterprise Act 2002 or the Communications Act 2003. Anyone in any doubt about whether and how they may be affected by the legislation should seek legal advice. It should also be borne in mind that, whilst the guidance is intended to provide an indication of how the media public interest merger regime will operate in practice, and the approach the Secretary of State is likely to adopt in considering cases, each transaction will be looked at on its merits on a case-by-

case basis. The guidance may be revised from time to time in the light of experience in operating the media public interest regime. Revision may be more likely in respect of the assessment of broadcasting and cross-media public interest considerations where, unlike the newspaper public interest considerations, there are no established precedents for analysing the effect of mergers on the public interests as defined.

## **Background to the media public interest considerations**

### **Newspaper mergers**

- 2.1 A regulatory system for newspaper mergers was first introduced by the Monopolies and Mergers Act 1965, following the Report of the Royal Commission on the Press in 1962<sup>1</sup> which concluded that control of the Press was a matter of particular public sensitivity and that the increasing concentration of newspaper ownership in too few hands could stifle the expression of opinion and argument and distort the presentation of news. The Secretary of State considers that these concerns continue to underlay the special consideration that can be given to newspaper mergers.
- 2.2 The regime in the Monopolies and Mergers Act 1965, which was largely replicated in the Fair Trading Act 1973 (the “FTA”), subjected most newspaper mergers to a stricter system of control than other mergers. A transfer of a newspaper that met the criteria for the application of the regime was unlawful and void if it proceeded without the prior consent of the Secretary of State. With certain limited exceptions the Secretary of State could not consent to qualifying newspaper transfers without a reference to the Competition Commission<sup>2</sup>. Criminal penalties attached to breach of the consent requirements.
- 2.3 The FTA newspaper merger regime imposed significant costs on the industry and yet the vast majority of cases considered by the Secretary of State were given unconditional consent, whether following or without a Competition Commission reference<sup>3</sup>. Nonetheless, there have been a number of cases where Ministers have intervened in newspaper mergers over concerns other than competition. These cases indicate a continued need, now met by the new newspaper public interest considerations, to address these concerns.

### **The new regime for newspaper mergers**

- 2.4 The new regime for newspaper mergers<sup>4</sup> takes elements from the

---

<sup>1</sup> Cmnd 1811.

<sup>2</sup> The Competition Commission replaced the Monopolies and Mergers Commission on 1 April 1999.

<sup>3</sup> Of the 187 applications considered under the FTA regime between November 1973 (when the FTA came into force) and April 2003, only ten were refused consent or were granted subject to conditions.

<sup>4</sup> Introduced into the Enterprise Act 2002 by the Communications Act 2003.

FTA newspaper merger regime whilst integrating the assessment of newspaper mergers into the general merger system in the Enterprise Act 2002. The new regime seeks to secure the continued protection of the particular public interests related to newspapers while lifting much of the regulatory burden on the industry and on the competition authorities.

- 2.5 In consequence, whilst the procedures under the new regime are radically different from the old, the Secretary of State expects there to be considerable continuity between the assessment of the substantive issues under the FTA regime and under the new regime. Indeed, the newspaper public interest considerations now specified in the Enterprise Act 2002 are based on public interest detriments that have been found to exist in previous newspaper mergers examined under the FTA regime. Consequently, decisions under the old regime and previous reports of the Competition Commission or Monopolies and Mergers Commission (the “MMC”) are expected by the Secretary of State often to be relevant to the consideration of issues under the new regime.

### **Other media mergers**

- 2.6 In common with other modern democracies, the UK has for some time regulated the communications industry. Media ownership rules have applied because market forces alone, even regulated by competition law, cannot necessarily provide the market-place of ideas<sup>5</sup> that enables democracy to prosper. Nevertheless, developments in technology and the desire to promote a more competitive communications industry that will attract greater investment have encouraged the deregulation of the industry. The broadcasting and cross-media public interest considerations were introduced into the Enterprise Act 2002 by the Communications Act 2003, which at the same time relaxed certain of the ownership rules that have applied to broadcast media and to cross-media ownership. Notwithstanding this relaxation, the media and cross-media public interest regime provides a safeguard to prevent media mergers bringing about undue concentrations of ownership, which may operate against the public interest. It will enable the Secretary of State to intervene in certain mergers involving media enterprises so as to ensure a sufficient plurality of media ownership, to protect the availability of a wide range of high quality broadcasting and to

---

<sup>5</sup> The phrase is usually traced to Justice Holmes’ dissenting opinion in *Abrams v. United States*, in 1919.

ensure that those with control of media enterprises have a genuine commitment to the broadcasting standards objectives set out in the Communications Act 2003.

## **Establishing jurisdiction**

### **“Standard” jurisdiction**

- 3.1 In order to provide consistency with the procedures and scope of the mainstream merger provisions of the Enterprise Act 2002, the jurisdictional criteria established in that Act are also used to identify the scope of the standard jurisdiction for the media public interest merger regime.
- 3.2 Under the Enterprise Act 2002, the Secretary of State is able to intervene under the public interest regime where she believes a merger may raise a public interest consideration specified in section 58 of that Act and the transaction constitutes a “relevant merger situation”<sup>6</sup>. A “relevant merger situation” is created where two or more enterprises cease to be distinct<sup>7</sup> *and* where at least one of the following thresholds is met, namely:
- the value of the turnover in the UK of the enterprise being taken over exceeds £70 million (the “turnover test”); or
  - the merger would result in the creation or enhancement of at least a 25% share of supply of goods or services of any description in the UK or in a substantial part of the UK (the “share of supply test”).
- 3.3 Thus, the Secretary of State will be able to intervene where she believes that a media public interest consideration is or may be relevant to the “relevant merger situation”.

### **Extension of special public interest regime for media mergers**

- 3.4 The jurisdictional thresholds of the mainstream merger regime in the Enterprise Act 2002 focus on transactions that (a) involve acquisitions of enterprises with relatively high overall economic significance (the turnover test) and/or (b) will have a consolidating impact which could reduce direct competition (the share of supply test).
- 3.5 However, media public interest concerns are not necessarily so

---

<sup>6</sup> Section 23(1) and (2) Enterprise Act 2002 – see OFT guidance “*Mergers: Substantive Assessment Guidance*”, Chapter 2.

<sup>7</sup> See section 26 Enterprise Act 2002.

limited. For example, where the concern relates to the likely impact of a change of owner of a newspaper on accurate presentation of the news or free expression of opinion, it may not be relevant whether the acquisition has a consolidating effect. Similarly, change of ownership of broadcast media enterprises may give rise to concerns regarding the commitment of the new owner to a broad range of high quality programming in the absence of consolidation. It is also the case that a £70 million turnover threshold in the context of the newspaper industry is a relatively high one; many local newspapers fall below this level and yet such newspapers can be of key significance for their local communities, which if small may not be able to support a great diversity of newspaper titles. Much the same applies to many local radio stations.

- 3.6 As a result, the legislation provides that mergers that may raise media public interest considerations can be scrutinized on these grounds under the special public interest regime in circumstances where the standard jurisdictional criteria are not met. In such “special merger situations”<sup>8</sup>, the review will be on specified public interest grounds only – there will be no assessment of competition issues.
- 3.7 Accordingly, the media public interest considerations are not restricted to transactions leading to the *creation or enhancement* of a 25% share of supply (as is the case under the mainstream share of supply provisions). So long as one of the parties to the merger has an existing 25% or more share of supply of newspapers of any description in the UK or in a substantial part of the UK, the Secretary of State may intervene in order to protect a newspaper public interest consideration<sup>9</sup>. Similarly, the Secretary of State may intervene to protect broadcasting and cross-media public interest considerations where one of the parties to the merger has an existing share of provision of broadcasting of any description of at least 25% in the UK or in a substantial part of the UK<sup>10</sup>.
- 3.8 Transactions where the UK turnover of the company acquired does not exceed £70 million and there is neither an existing share of supply of newspapers or provision of broadcasting of 25% or more

---

<sup>8</sup> Section 59(1) Enterprise Act 2002.

<sup>9</sup> Section 59(3C) Enterprise Act 2002.

<sup>10</sup> Section 59(3D) Enterprise Act 2002.

in the UK or in a substantial part of the UK<sup>11</sup>, nor is such a share created by the merger, are completely excluded from merger scrutiny in the UK.

- 3.9 It should be noted that no consequences will flow from the fact that a transaction falls within the special public interest regime unless and until the Secretary of State decides to intervene in a particular case.

### **Share of supply in the special public interest regime for media mergers**

- 3.10 In order to avoid too many transactions falling within the scope of the special merger regime for media mergers the generic sector to which the special merger jurisdiction applies is specified – i.e. the supply of newspapers<sup>12</sup> or provision of broadcasting<sup>13</sup>. This may be broken down more specifically by identifying the category of goods or services in relation to which the 25% share of supply is held in any particular case. This is consistent with, and calculated in the same way as, the share of supply test applied under the mainstream merger regime of the Enterprise Act 2002. Thus, the criteria for determining whether the share of supply has been fulfilled would be up to the decision-making authorities to determine in each case and could, for example, be based on circulation, share of viewers or listeners, value, cost or advertising revenue<sup>14</sup>.

### **Concept of a “newspaper”**

- 3.11 The scope of the term “newspaper” is set out in the legislation<sup>15</sup> and is the same as applied in the FTA newspaper merger regime<sup>16</sup>. A newspaper is defined as “a daily, Sunday or local (other than daily or Sunday) newspaper circulating wholly or mainly in the United Kingdom or in a part of the United Kingdom”. The effect of this is that the newspaper public interest considerations potentially apply to mergers involving daily and Sunday newspapers, whether national or local, and local periodical newspapers (subject of course to the jurisdictional criteria described above applying). The regime does

---

<sup>11</sup> In the context of the Fair Trading Act 1973, the meaning of “a substantial part of the UK” has been clarified by case law as meaning the part must be of “such a size, character and importance as to make it worthy of consideration for the purposes of the Act” (Nourse LJ in *South Yorkshire Transport Ltd v. MMC* [1983] 1 All. E.R. 289).

<sup>12</sup> As defined in section 44(10) Enterprise Act 2002.

<sup>13</sup> As defined in section 44(9) Enterprise Act 2002.

<sup>14</sup> Section 59A Enterprise Act 2002.

<sup>15</sup> Section 44(10) Enterprise Act 2002.

<sup>16</sup> Section 57(1)(a) Fair Trading Act 1973.

not apply to newspapers circulated predominantly outside the UK.

- 3.12 Whether or not a publication is a “newspaper” will depend on an examination of the particular publication. The Secretary of State takes the view that the definition of “newspaper” starts with the ordinary and a natural meaning of the word and includes a publication regardless of whether or not it is paid for. To be a newspaper, the publication should contain some news content. Publications consisting wholly or almost wholly of advertising are not, in the Secretary of State’s view, newspapers.
- 3.13 In considering whether or not a publication is a “newspaper” for the purposes of the newspaper public interest considerations, the following questions are in the opinion of the Secretary of State relevant:
- Is there any real attempt at news coverage? News coverage is not limited to actual reporting of events but includes editorials and articles of interest.
  - Does it contain advertisements that should properly appear in a newspaper? For instance certain statutes require matters to be advertised in a newspaper and not in an advertising free sheet.
  - What is the proportion of the publication that contains advertisements or advertorials as compared with news content?
- 3.14 In considering whether a newspaper is a *local* newspaper for the purposes of the newspaper public interest regime, the factors to which the Secretary of State will have regard include the geographic distribution of the newspaper and the nature of the news content and whether it deals with local issues.

### **Concept of “broadcasting”**

- 3.15 Broadcasting is defined in the legislation<sup>17</sup> as the provision of services the provision of which is required to be licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996 or would be required to be so licensed if provided by a person subject to licensing under the Part in question.
- 3.16 The latter part of the definition is intended to include services provided by the BBC or the Welsh Authority, or by broadcasters

---

<sup>17</sup> Section 44 (9) of the Enterprise Act 2002.

established abroad and broadcasting into the UK under European Union licences. This broad definition allows the Secretary of State to take account of the existence of, for example, the services of the BBC or the Welsh Authority when carrying out the assessment of the sufficiency of plurality of controllers of media enterprises in new section 58(2C).

3.17 The definitions may be amended by order pursuant to section 44(11) of the Enterprise Act 2002.

### **Acquisitions of “control” of newspapers**

3.18 The FTA newspaper merger regime applied only to direct or indirect acquisitions of a 25% voting interest<sup>18</sup>, whereas the standard merger provisions of the Enterprise Act 2002 Act apply where enterprises come under common ownership or common control<sup>19</sup> (so long as the share of supply or turnover thresholds are satisfied). This includes acquisitions of “material influence” over an enterprise<sup>20</sup>, which can arise at lower levels of interest and conceivably in the absence of an equity interest<sup>21</sup>.

### **No pre-notification requirement**

3.19 Under the FTA newspaper merger regime a transfer of a newspaper or newspaper assets to a newspaper proprietor required the prior written consent of the Secretary of State where the newspapers of the proprietor to whom the transfer is made (including the titles being acquired) have an average paid for circulation of 500,000 copies or more per day. Subject to certain statutory exceptions, the Secretary of State could not give this consent without a Competition Commission report. Under the new merger regime, merger parties will have the option to proceed to close the transaction before clearance is obtained (albeit at their own risk). As is the case with all UK relevant mergers situations, the merger may be referred to the Competition Commission after the completion of the transaction. In the event of an adverse public interest finding in such a case, the transaction may have to be unwound if no other remedies are

---

<sup>18</sup> Section 57 Fair Trading Act 1973.

<sup>19</sup> Section 26(1) Enterprise Act 2002.

<sup>20</sup> Section 26(3) Enterprise Act 2002.

<sup>21</sup> On this subject, see in particular OFT *Mergers: Substantive Assessment Guidance* (paragraphs 2.9 to 2.12), the OFT press release on B SkyB/Leeds Sporting (PN8/00, 3 February, 2000) and the Competition Commission report on *NTL Communications Corporation/Newcastle United* (Cm 4411, July 1999).

appropriate. The power to refer a completed media merger to the Competition Commission on competition or public interest grounds is subject to the standard longstop on reference of four months<sup>22</sup>.

---

<sup>22</sup> From the date on which the enterprises cease to be distinct, or, if later, the date on which material facts about the transaction under which they ceased to be distinct are made public – section 24 Enterprise Act 2002.

## **Procedure**

- 4.1 The procedure for examination of transactions raising media public interest considerations is largely aligned with the mainstream merger provisions in the Enterprise Act 2002, with certain modifications to take account of the advisory role of OFCOM.

## **Market monitoring**

- 4.2 Consistent with its obligations as the body responsible for the operation of the mainstream merger provisions, the OFT has responsibility for carrying out the initial market monitoring activity in relation to media merger cases, with the obligation to inform the Secretary of State of cases that it believes raise the specified media public interest considerations<sup>23</sup>. In addition, the Secretary of State retains the ability to look at cases on her own initiative, and it would equally be open to OFCOM or anyone else to draw cases to her attention.

## **Notification of merger situations involving newspapers and broadcasting**

- 4.3 Parties to a merger which potentially raises media public interest considerations have a number of options for approaching OFT and OFCOM to discuss the merger.
- 4.4 Parties may make OFT and OFCOM aware informally of an anticipated transaction ahead of its announcement. Doing so should ensure that any notification is more focused on the information OFT and OFCOM will require to make their assessments of the merger.
- 4.5 Parties may seek informal advice from the OFT and OFCOM on the likelihood of reference on competition or public interest grounds respectively. This would follow the procedure set out in the OFT's Merger Guidance<sup>24</sup>. This involves submitting a paper outlining the anticipated transaction at least 48 hours ahead of a meeting with officials, who then give their non-binding and confidential view, based purely on the information provided. In such cases the paper should be submitted to OFCOM and the OFT and a joint meeting

---

<sup>23</sup> Sections 5, 57 and 119B Enterprise Act 2002.

<sup>24</sup> See OFT publications "Mergers: Procedural Guidance (May 2003)" and "Mergers: Substantive Assessment Guidance (May 2003)".

with the parties would be held, with both commenting on their respective areas. For the avoidance of doubt, the Secretary of State will not give an informal view or make a decision not to issue an intervention notice.

- 4.6 Parties may also seek confidential guidance on anticipated transactions that have yet to be announced. Again this follows the procedure set out in the OFT's Merger Guidance, except that OFCOM's view on whether it would be likely to recommend a reference will be added. None of these views, which are sent to parties as a letter stating the conclusion reached and an offer of a joint meeting in which the OFT and OFCOM can expand upon their conclusion, is binding. The OFT will aim to reach a conclusion within a specified administrative timetable. OFCOM will aim to advise within a similar period.
- 4.7 Once a merger has been announced, and before it is completed, the parties can notify it using a merger notice (also known as a formal submission) to the OFT and copying it to OFCOM. The procedures for this are outlined in the OFT Merger Guidance and the information should be supplemented with such details as, in the case of mergers involving newspaper enterprises:
- The name(s) of the newspaper title(s) in question and a sample copy of each one;
  - Data on the circulation or distribution areas of each title;
  - Information on competing titles in those areas, including ownership of those titles;
  - Details of advertising revenue generated by each title;
  - A statement on the proposals for the titles – for example, whether it is intended that the newspapers will continue to operate as separate titles or whether any changes in the nature of the content of the titles are envisaged;
  - Information on the arrangements envisaged for ensuring accurate presentation of news and free expression of opinion and on whether the existing editorial and reporting staff will be retained.

In the case of mergers involving broadcast media enterprises it should be supplemented with such details as:

- Channels used;
- audiences served;
- advertising revenue;

- and arrangements for editorial control.

- 4.8 A merger notice can only be used if the merger qualifies under the standard merger regime. If an intervention notice is not issued the OFT will make a decision on the competition aspects within the statutory deadline of 20 working days, unless the OFT extends this by 10 working days, and the Secretary of State's ability to issue an intervention notice will lapse with that statutory deadline. If an intervention notice is issued the statutory deadline for the Secretary of State to make a decision on reference following advice from OFT and OFCOM will be extended by the OFT by 10 working days. This extension is in addition to the OFT's ability to extend the deadline by 10 working days.
- 4.9 Parties can also choose to make an informal submission for anticipated or completed mergers, with copies to both OFT and OFCOM. If an intervention notice is issued the Secretary of State will ask the OFT and OFCOM to report within a specified period on the competition and public interest issues respectively. If an intervention notice is not issued the OFT will aim to reach a decision, based purely on the competition assessment, within the administrative deadline and communicate it to the parties. Once that decision has been made the Secretary of State may not issue an intervention notice.

### **Intervention notice**

- 4.10 Where a transaction is identified as giving rise to a media public interest consideration, the Secretary of State will be able to serve an intervention notice specifying the relevant public interest consideration(s)<sup>25</sup>. She will then be able to consider whether to refer the transfer to the Competition Commission for examination of the newspaper or broadcasting and cross-media public interest considerations together with any competition issues that are identified by the OFT, or to direct the OFT to seek undertakings in lieu of a reference. Both the OFT and OFCOM must provide advice to the Secretary of State within the deadline set by the Secretary of State<sup>26</sup> and, in the context of a merger notice<sup>27</sup>, in sufficient time for an informed decision to be made within the

---

<sup>25</sup> Section 42(2) Enterprise Act 2002.

<sup>26</sup> Sections 44 and 44A Enterprise Act 2002.

<sup>27</sup> The merger notice may only be used to notify relevant merger situations and is not appropriate in the case of special merger situations.

statutory timetable<sup>28</sup>.

- 4.11 OFCOM will carry out the consultation seeking third party views on the impact of the transaction on the media public interest considerations specified in the intervention notice, with OFT taking responsibility only for the competition aspects of the transaction (although if representations are made to the OFT relating to any of the media public interest considerations, it may include a summary of these representations in its report). The Secretary of State will publish a non-confidential version of any such report made by the OFT or OFCOM<sup>29</sup>.
- 4.12 If the Secretary of State wishes to add a further public interest consideration to the list in section 58 of the Enterprise Act 2002, she must bring forward an order specifying the consideration in section 58 and seek Parliament's approval of it ('finalise' the consideration) as soon as practicable.
- 4.13 The Secretary of State may, where she believes there is a realistic prospect of the new public interest consideration being finalised, delay taking the decision on reference for up to 24 weeks from the date of the intervention notice so that she might be able to take a newly approved consideration into account in making that decision.
- 4.14 In the event that the Secretary of State decides that the newspaper or broadcasting and cross-media public interest considerations are not relevant to a transaction, the case will revert to the OFT and to the standard procedure. Otherwise the Secretary of State will balance any competition detriment identified along with the specified newspaper or broadcasting and cross-media public interest considerations in making the decision as to reference<sup>30</sup> or whether to accept undertakings in lieu of a reference<sup>31</sup>.
- 4.15 The Secretary of State will not be able to dispute the OFT's finding as to jurisdiction or competition<sup>32</sup>. If no competition concerns are identified the Secretary of State will not be able to make a competition reference, but she will still be able to make a reference to the Competition Commission on the public interest

---

<sup>28</sup> See OFT Publication "*Mergers: Procedural Guidance (May 2003)*" Annex A.

<sup>29</sup> Section 107(3) Enterprise Act 2002.

<sup>30</sup> Section 45 Enterprise Act 2002.

<sup>31</sup> Paragraph 3 of Schedule 7 Enterprise Act 2002.

<sup>32</sup> Section 46(2) Enterprise Act 2002.

consideration aspects alone.

- 4.16 Where a competition problem has been identified by the OFT this must be treated as being adverse to the public interest unless the Secretary of State considers this to be outweighed in the overall assessment. However, the Secretary of State may not clear a merger where the OFT has identified competition concerns if the public interest consideration that she wishes to base that decision on has not been approved by Parliament.
- 4.17 In relation to special merger situations, broadly the same procedures will apply as for media mergers under the standard jurisdiction<sup>33</sup>. The Secretary of State issues a special intervention notice specifying a media public interest consideration, and the OFT and OFCOM will provide her with advice. However, in the context of a special merger situation the OFT will assess only jurisdiction and will not carry out any competition analysis<sup>34</sup>. In addition, unlike the case for relevant merger situations, it is not possible for the Secretary of State to specify new public interest considerations in a special intervention notice whilst a case is being considered. She can only invoke those public interest considerations specified in section 58 of the Enterprise Act 2002 at the time the special intervention notice is given.

### **Competition Commission procedures**

- 4.18 Once a merger where a media public interest consideration has been specified in the reference has been referred to it, the Competition Commission will be required<sup>35</sup>:
- (1) to decide whether a “relevant merger situation” within the mainstream merger regime has been or will be created or, in the alternative, whether a relevant merger situation which satisfies the criteria for a special merger situation has been or will be created;
  - (2) where specified in the reference, to consider whether the merger has resulted or may be expected to result in a substantial lessening of competition;
  - (3) taking account only of competition aspects (if referred) and

---

<sup>33</sup> Sections 59 to 66 Enterprise Act 2002 – note that sections 96 to 102 concerning merger notices do not apply in relation to special merger situations.

<sup>34</sup> Section 61 Enterprise Act 2002.

<sup>35</sup> Sections 47 and 63 Enterprise Act 2002.

the identified public interest consideration, to decide whether the transfer operates or may be expected to operate against the public interest;

- (4) if the Commission has decided that the merger operates or may be expected to operate against the public interest, to decide (a) whether any action should be taken by the Secretary of State or (b) whether to recommend the taking of any action by the Secretary of State or by others to remedy the identified effects adverse to the public interest;
- (5) if the Commission has decided there is or may be a substantial lessening of competition, to decide whether it should take action, or whether it should recommend the taking of action by others, to remedy the substantial lessening of competition, or any adverse effects resulting from it.

4.19 As indicated above, the Secretary of State has the power to add additional public interest considerations to those specified in section 58. However, if a new public interest consideration mentioned in the reference is not approved by Parliament within 24 weeks of the intervention notice having been served, the Competition Commission must disregard that consideration when drawing up its report.

4.20 Where the Competition Commission investigates a special merger situation, it may have regard only to the public interest considerations specified in the reference – no competition assessment is carried out.

4.21 On completion of its investigation, the Competition Commission will deliver the report to the Secretary of State, and at the same time will supply a copy to OFCOM<sup>36</sup>.

### **Consultation obligations**

4.22 In general, the Competition Commission will be able to adopt its own procedures, within the limits prescribed for public interest consideration cases in the Enterprise Act 2002. However, where a reference is made to the Competition Commission specifying a media public interest consideration there is a specific requirement on the Competition Commission to have regard to the need to consult with a view to obtaining a representative cross section of

---

<sup>36</sup> Sections 50(2A) and 65(2A) Enterprise Act 2002.

opinion of those who may be affected by the media merger<sup>37</sup>.

### **Newspaper Panels**

- 4.23 The Competition Commission has a specialist newspaper panel<sup>38</sup> and the Chairman of the Competition Commission must appoint one or more members from the newspaper panel to the group constituted to deal with a newspaper merger reference. If the Chairman selects three such members, the group may consist entirely of those members<sup>39</sup>.
- 4.24 The Chairman will only be able to select a newspaper panel member to be a member of the group where a reference is made specifying a newspaper public interest consideration (unless the newspaper panel member in question is also a member of the general reporting panel<sup>40</sup>). Cases that are not subject to intervention will be dealt with under the general merger regime in the same way as any other transaction.

### **Secretary of State's obligations**

- 4.25 On receipt of the report, the Secretary of State will:
- publish her decision on whether to make an adverse public interest finding, or make no finding at all, within 30 days of receipt of the report<sup>41</sup>. She will accept the Competition Commission's conclusions on jurisdiction and competition (where applicable)<sup>42</sup>;
  - consider the question of remedies where the decision made is that there is an adverse public interest. She must have regard to the report of the Competition Commission, but the final question on remedies will rest with her<sup>43</sup>; and
  - publish the report<sup>44</sup>, subject to any excisions that may be required<sup>45</sup>.

### **Mixed Transactions**

---

<sup>37</sup> Section 104A Enterprise Act 2002.

<sup>38</sup> Paragraph 22 of Schedule 7 to the Competition Act 1998 as amended.

<sup>39</sup> Paragraph 15(5) of Schedule 7 to the Competition Act 1998 as amended.

<sup>40</sup> Paragraph 2 Schedule 7 Competition Act 1998 as amended.

<sup>41</sup> Sections 54(5) and 66(3) Enterprise Act 2002.

<sup>42</sup> Section 54(7)(a) Enterprise Act 2002.

<sup>43</sup> Sections 55 and 66 Enterprise Act 2002.

<sup>44</sup> Section 107(3) Enterprise Act 2002

<sup>45</sup> Section 118 Enterprise Act 2002

- 4.26 An acquisition may involve both newspaper/broadcasting and non-newspaper/non-broadcasting assets and once the Secretary of State intervenes in relation to a merger on the basis of a media public interest consideration, the whole transaction (not just the newspaper or broadcasting aspects) will be examined under the public interest consideration procedures. However, because the Secretary of State will be bound by the findings of both the OFT and the Competition Commission as to the competition analysis, it is anticipated that the substantive outcome for the non-newspaper/non-broadcasting aspects of the transaction will be unchanged<sup>46</sup>.
- 4.27 In the case of a cross media merger involving both a newspaper enterprise and a broadcast media enterprise, both the newspaper public interest considerations and the broadcasting and cross-media public interest considerations may be relevant.

---

<sup>46</sup> But note that as regards remedies following a reference, the Secretary of State will be able to balance competition and public interest aspects in deciding on the appropriate remedies.

## Scope of the newspapers public interest consideration

- 5.1 Relevant merger situations and special merger situations in relation to which an intervention notice specifying a newspaper public interest consideration is served will be assessed by reference to the newspaper public interest considerations specified in that notice<sup>47</sup>. If the merger qualifies under the standard jurisdiction of the Enterprise Act 2002 because it is a “relevant merger situation” the newspaper public interest assessment will be in addition to the standard competition assessment (and the analysis of any other public interest considerations that may be specified in the intervention notice). If the merger qualifies under the extended jurisdiction of the Enterprise Act 2002 because it is a special merger situation, any assessment will be limited to the public interest considerations specified in the special intervention notice.
- 5.2 Whether or not the Secretary of State decides to intervene in a relevant merger situation or special merger situation will depend upon her reaching an initial view that the case may raise relevant public interest concerns. She must believe that a public interest consideration is relevant to the consideration of the merger.
- 5.3 The newspaper public interest considerations set out in section 58 (2A) and (2B) Enterprise Act 2002 encompass the public interest in the need for:
- (a) accurate presentation of the news in newspapers;
  - (b) free expression of opinion in newspapers; and
  - (c) to the extent reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the UK or a part of the UK.
- 5.4 These newspaper public interest considerations are derived from concerns identified in particular cases examined by the Competition Commission and MMC under the FTA newspaper merger regime. Under that regime, the Competition Commission was required to look at “whether the transfer in question may be expected to operate against the public interest, taking into account all matters which appear in the circumstances to be relevant and, in particular, the need for accurate presentation of the news and

---

<sup>47</sup> A special intervention notice may only specify public interest considerations that have been approved by Parliament and are set out in section 58 of the Enterprise Act 2002 at the time of intervention.

free expression of opinion”<sup>48</sup>. As explained in paragraph 2.5 above, and setting the effect of newspaper mergers on competition aside for the purposes of looking at the new newspaper public interest considerations, the Secretary of State expects there to be considerable continuity between the analysis of cases under the FTA newspaper regime and under the new newspaper public interest considerations. The following section of this guidance therefore draws out precedents from the treatment of newspaper mergers under the FTA as a guide to how similar cases are likely to be looked at under the new regime. However, although in practice the Competition Commission considers its previous relevant cases when making a decision on a matter referred to it, it is not under an obligation to do so and is not bound by precedent.

- 5.5 Of the 50 newspaper cases referred to it since 1973 under the FTA special newspaper merger regime, the Competition Commission<sup>49</sup> has made adverse findings (in relation to all or part of the transfers in question), in ten published reports<sup>50</sup>. Of these, editorial issues relating to free expression of opinion and the accurate presentation of news were relevant to five decisions. Further details of the way in which these tests have been applied in practice in the past are set out below.

**(a) Accurate presentation of the news**

- 5.6 The impact of a relevant merger situation on accurate presentation of the news is likely to be assessed by reference to evidence of past behaviour by the enterprises in question, or by the persons with control of such enterprises, in relation to that or other enterprises, including but not limited to newspapers.
- 5.7 In the 1990 case of David Sullivan and the *Bristol Evening Post* the MMC concluded that evidence of David Sullivan’s connection with the *Daily Star* (plus his holdings in the *Sport* and

---

<sup>48</sup> Section 59(3) Fair Trading Act 1973.

<sup>49</sup> The Competition Commission replaced the Monopolies and Mergers Commission with effect from 1 April 1999.

<sup>50</sup> Bristol United Press/West Somerset Free Press (April 1980); Reed International/Berrows Organisation (April 1981); George Outram & Company Ltd/The Observer (June 1981); TR Beckett Ltd/EMAP plc (February 1989); Century Newspapers/TRN (April 1989); Bristol Evening Post/David Sullivan (May 1990); DMGT/T Bailey Forman Ltd (October 1994); Trinity plc/Mirror Group plc (March 1999); Johnston Press/Trinity Mirror (May 2002); Newsquest (London)Ltd/Independent News and Media (October 2003). Note that conditions were also attached to the consent for transfer of The Times and the Sunday Times to News International in 1981, without a reference to the MMC.

the *Sunday Sport*) suggested that he would seek to influence editorial policy and the character and content of the newspapers in a manner which would harm both the accurate presentation of news and the free expression of opinion.

**(b) Free expression of opinion**

- 5.8 In considering the impact of a newspaper merger on free expression of opinion, the Competition Commission (and before it the MMC) has focused on the potential impact on editorial decision-making of the transfer of newspapers in question i.e. the extent to which the transaction would affect the freedom of editors to operate without interference from the proprietor.
- 5.9 The Competition Commission (and before it the MMC) has generally been of the view that to maintain or increase circulation, regional or local newspapers must reflect the views and concerns of readers in their area, and that local editors are best placed to judge this<sup>51</sup>. Market forces therefore tend to ensure a significant degree of independence for local editors, whether the owner is a national publisher or a local publisher. However, there are exceptional cases – for example the Sullivan case referred to above – where the Competition Commission has been of the view that these forces were insufficient to prevent a newspaper proprietor from seeking to influence editorial policy.
- 5.10 Similarly, in *George Outram & Company Ltd/The Observer* (June 1981) the MMC recommended that conditions be attached to the Secretary of State’s consent to safeguard editorial independence against a potential conflict of interest arising out of the extensive business interests of Lonrho (the parent company of the purchaser *George Outram & Company Ltd*).
- 5.11 Issues of editorial interference were also examined in the Competition Commission report on *Johnston Press plc/Trinity Mirror plc* (May 2002), where an allegation of editorial interference was raised part way through the reference and was investigated by the Competition Commission. Although the concern was ultimately not upheld (the partial block was on the basis of competition concerns) paragraphs 2.122 – 2.136 of the Competition Commission’s report on that case describe the

---

<sup>51</sup> See paragraph 2.22 of the *Trinity/Mirror Group/ Regional Independent Media Holdings* Competition Commission report.

manner in which it conducted this aspect of the inquiry and illustrate the threshold the Commission required for a finding that there is evidence of editorial interference rather than normal management issues and relationships.

**(c) Plurality of views**

- 5.12 The concept of “a sufficient plurality of views” is in the Secretary of State’s view intended to encompass the need for a diversity of viewpoints exhibited in the relevant sector of the press. In particular, it allows consideration of the structural impact of a transaction on the overall range of views and distribution of voice within the relevant market. The test of a sufficient plurality of views is intended to enable regard to be had not only to the need for a sufficient number of views to be expressed, but also to the need for variety in those views and for there to be a variety of outlets and publications in which they can be expressed. There is a qualitative element to the plurality assessment that requires account to be taken of the context in which titles circulate and the nature of those titles – for example, one title in a particular area may be of greater significance for plurality purposes than another.
- 5.13 The plurality consideration in section 58 (2B) of the Enterprise Act 2002 is qualified by the reference to reasonableness and practicability. In the Secretary of State’s view, this reflects the fact that although plurality of views in each and every market is the ideal goal of the regime, it may not be reasonable to require this in relation to a particular part of the market, for example because of associated costs. Moreover the level of plurality of views that may be considered reasonable in a large urban area may differ from the level practicable in a small rural community. In making this assessment the Secretary of State expects to take into account all relevant circumstances, for example the size and nature of the relevant area, and the extent to which other newspapers in the same area contribute to the level of plurality of views.
- 5.14 The plurality newspaper public interest consideration is aimed at identifying issues such as those arising in the MMC’s report on the proposed merger of Century Newspapers and TRN (April 1989). In that case, the merged entity would have owned both the *News Letter* (a publication with a strong Unionist emphasis) and the *Belfast Telegraph* (which also expressed Protestant views but

was considered to be a more middle of the road publication read by both Protestants and Roman Catholics). Consent was refused by the then Secretary of State as the merger would lead to the *News Letter* joining the *Belfast Telegraph* in the middle ground, leading to a loss of a distinctive viewpoint in representing Unionist opinion in Northern Ireland.

5.15 Similar concerns were raised in the context of the merger of the Competition Commission's report on Trinity plc/Mirror Group plc and Regional Independent Media Holdings Ltd/Mirror Group plc (July 1999). In relation to the proposed acquisition of Mirror plc by Trinity plc, the Competition Commission was concerned that the common ownership of two Northern Irish publications with a unionist stance was likely to lead to convergence in the perspectives of the two papers and the loss of a distinctive voice in representing unionist opinion. The Competition Commission recommended that the two newspapers should remain in separate ownership, so that the existing distinctness of view and opinion would be maintained. The then Secretary of State accepted this but also considered that the transfer would damage the ability of the *Irish News* (the Roman Catholic title) to generate advertising revenue, which would threaten the viability of that title and the expression of a Roman Catholic viewpoint in the press<sup>52</sup>. The then Secretary of State's consent to the transfer merger was conditional on the disposal of certain titles in Northern Ireland, including the *Belfast Telegraph*.

5.16 Whilst plurality concerns may be more likely to arise in relation to mergers between existing newspaper proprietors, when assessing the impact of a merger on the newspaper public interest considerations it is not intended to replicate or import aspects of the substantial lessening of competition test that applies in relation mergers raising competition concerns. This test will be applied separately by the competition authorities, where appropriate. An example of concerns regarding the impact of consolidation on the need for a plurality of views in newspapers in the UK can be seen in the MMC's report on the proposed

---

<sup>52</sup> The Competition Commission considered this issue but did not believe that the risk was likely to materialise. The Secretary of State disagreed with this. Unlike the general merger regime, under the FTA special newspaper merger regime the Secretary of State was not bound by the findings of the Competition Commission as to whether or not the merger would operate against the public interest. This remains the case under the public interest merger process set out in the Enterprise Act 2002 where the final decision on whether a merger gives rise to public interest issues rests with the Secretary of State.

acquisition by Daily Mail & General Trust of *Nottingham Evening Post*<sup>53</sup>. In that case, the Competition Commission concluded that the increase in regional concentration of ownership could be expected to pose a risk to the maintenance of diversity of opinion in the region and would in turn jeopardize accurate presentation of news and free expression of opinion.

---

<sup>53</sup> DMGT/T Bailey Forman Ltd (October 1994).

## Policy on intervention in newspaper public interest cases

- 6.1 The approach the Secretary of State will take in deciding whether or not to intervene in a particular case will develop in the light of experience in operating the new newspaper public interest merger regime. This is not an area suited to generalisation; each case will need to be considered on its own facts and merits. However, the Secretary of State can give some indications of the general approach she expects to adopt.
- 6.2 The initial consequence of an intervention notice (or special intervention notice) being served is to trigger an initial investigation and a report on newspaper public interest considerations arising in a particular case by OFCOM. The OFT will report on issues relating to jurisdiction and competition under the standard public interest regime (or jurisdiction alone under the special newspaper public interest regime). This will allow the Secretary of State to make an informed decision on whether or not to refer a transaction to the Competition Commission for detailed investigation. The initial decision to intervene will inevitably be taken when only basic information is known about a given transaction. It will be informed by general knowledge and experience as to the types of transaction that can raise newspaper public interest concerns and any third party comments that may be available. The Secretary of State will also have regard to the intention that the new regime should be no more burdensome than necessary.
- 6.3 The rationale for having a special regime to deal with public interest considerations arising in the context of newspaper mergers is that historically there have been a small number of cases that have raised issues beyond those that would be considered as part of a competition assessment. Such cases have generally been fairly easily identifiable from the outset: - the contentious acquirer (e.g. David Sullivan's proposed acquisition of the *Bristol Evening Post*), the contentious case involving national newspapers (*The Times*, *The Observer*) or cases involving areas of particular cultural or political sensitivity (such as the cases involving newspaper titles in Northern Ireland<sup>54</sup>). The small number of cases that have resulted in adverse public interest findings other than on competition grounds under the FTA newspaper merger regime suggests that the number of cases in which the Secretary of State will find it necessary to intervene on the

---

<sup>54</sup> Century Newspapers/TRN (April 1989), Trinity plc/Mirror Group plc and Regional Independent Media Holdings Ltd/Mirror Group plc (July 1999).

basis of newspaper public interest considerations under the new regime is likely to be small.

- 6.4 The Secretary of State has considered a range of factors that might be identified in a particular case, and the weight that these should carry in deciding whether or not to intervene. Set out below is a summary of these factors with an indication of the approach that the Secretary of State is currently minded to take. However, this is no more than a preliminary and general analysis that may need to be refined in the light of further experience in operating the regime. It should also be noted that fewer newspaper mergers will be referred to the Competition Commission than are initially reported on by OFCOM as a reference would only be made where, having received relevant reports from the OFT and OFCOM, the Secretary of State had concerns regarding the impact of a merger on the newspaper public interest considerations that warranted further investigation.

**Acquisition of a non-newspaper business by an existing newspaper owner.**

- 6.5 Although this type of transaction may qualify for intervention, that is likely to be rare. Circumstances which may lead the Secretary of State to *consider* intervention in such cases include those where for corporate structuring or tax reasons the form of a transaction does not reflect the reality of the situation (i.e. the transaction really involves a change of control of a newspaper), or cases where a transaction has unusual features raising particular plurality issues (e.g. if it involved unusually high financial risks to the point that there might be an impact on the viability of existing newspaper assets).

**Third party comments**

- 6.6 Where a transaction gives rise to a significant volume of adverse third party comments regarding the impact or potential impact of the transaction on newspaper public interest considerations, it may be appropriate to *consider* intervention. However, the specificity of the concerns raised in such cases and evidence in support of the concerns will be significant factors. Intervention is more likely where comments are received raising and substantiating a *specific* newspaper public interest concern.

## **Newspaper to newspaper mergers**

- 6.7 The likelihood of intervention in a newspaper to newspaper merger will depend upon the identity of the parties and the extent and nature of any overlaps between their newspaper activities (although the competition effects of the merger can be examined by the OFT if the standard jurisdictional tests are satisfied). However, there is a recognisable correlation between high levels of concentration and the potential for newspaper ownership concerns to arise. Thus, where a merger leads to market overlaps (e.g. a merger of two newspapers in the same market, in neighbouring markets, or within a cluster) it may be appropriate for the Secretary of State to *consider* in more detail whether newspaper ownership concerns may arise.

## **Acquisitions of newspapers by persons with existing interests in other (non-newspaper) media**

- 6.8 The mere fact that a newspaper would come into common ownership with other media in the relevant area is not of itself an issue for the purposes of the newspaper public interest considerations (although cross-media ownership rules set out in the Communications Act 2003 may apply, and if the standard jurisdictional thresholds are satisfied the OFT would be able to examine any competition issues arising from the merger). Nonetheless, there are circumstances in which the fact that a newspaper would become part of a group with other media interests in the same geographic market as the newspaper in question might be a relevant factor in assessing the impact of the transaction on the newspaper public interest considerations (for example, this may provide an indication of the likely editorial policy of the new owner in relation to newspapers). Where such geographic cross media overlaps occur, and the newspaper in question has a significant market share, the Secretary of State may wish to *consider* whether the transaction potentially gives rise to newspaper public interest concerns that would merit intervention.
- 6.9 In such cases, it is possible that the broadcasting and cross-media public interest considerations set out in section 58(2C) of the Enterprise Act 2002 may also be relevant.

## **Acquisitions by persons with no existing newspaper interests**

- 6.10 Such acquisitions are only likely to raise newspaper public interest

concerns in exceptional circumstances where the identity of the acquirer gives rise to concerns (as was the case in relation to the proposed acquisition of *Bristol Evening Post* by David Sullivan in 1990, although in that case Mr Sullivan did have existing newspaper interests) or where the acquiror is already present in other media in the same geographic area as the newspaper(s) in question (see above). However, in the absence of a significant volume of third party comments raising newspaper public interest concerns, or evidence of previous conduct that gives rise to such concerns (such as editorial interference in a periodical that is not a newspaper for the purposes of the newspaper public interest regime), the Secretary of State is unlikely to intervene in relation to acquisitions of local newspapers by persons with no existing newspaper interests.

## **Scope of the broadcasting and cross-media public interest considerations.**

- 7.1 The broadcasting and cross-media public interest considerations specified in section 58(2C) of the Enterprise Act 2002 are:
- the need, in relation to every different audience in the UK, or in a particular area or locality of the UK, for there to be a sufficient plurality of persons with control of media enterprises serving that audience;
  - the need for the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
  - the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.
- 7.2 For these purposes, a media enterprise is an enterprise consisting of or involved in broadcasting. However, where a relevant merger situation or special merger situation involves both a broadcast media enterprise and a newspaper enterprise, the newspaper enterprise is also considered to be a media enterprise for the purposes of the plurality public interest consideration specified in section 58 (2C)(a) (that is the first consideration above). Thus plurality can be considered across a wide range of newspaper and media audiences, which may include readership, and shares held by an enterprise through ownership of broadcasting and newspaper enterprises may be aggregated for the purpose of making the assessment of sufficiency of plurality. Considerations of range and quality, and of standards specified in 58(2C)(b) and (c), relate to broadcasting only. However, in considering how such a merger may impact on the range and quality, or the standards, of UK broadcasting, the Secretary of State considers it is reasonable to have regard to any relevant information as to the track record both of the enterprise seeking to acquire a broadcaster and of those who control it. In particular, where a relevant merger or special merger situation involves a broadcast

media enterprise and a newspaper enterprise, she may look at any relevant information as to how either the broadcasting or newspaper enterprise have run their affairs. Examples of information that may be relevant are given later on in this guidance.

- 7.3 These media public interest considerations invoked by the Secretary of State are distinct from the competition-based test applied by the competition authorities. The aim of this competition analysis is to prevent a level of concentration of ownership which could give rise to a substantial lessening of competition. However, there is a recognisable overlap between this competition assessment and at least the first of the broadcasting and cross-media public interest considerations, which posits the need for there to be a sufficient plurality of persons controlling media enterprises.
- 7.4 Although she will remain conscious of the distinctions between the competition and the public interest regimes, the Secretary of State anticipates that in some cases she may take the view that action to safeguard competition in a market will by itself be likely to provide a sufficient plurality of control. Such a view would be unlikely to be taken in cross-media mergers if the competition authorities considered that advertising in newspapers and in the broadcast media did not represent a sufficient competitive restraint on each other.
- 7.5 This view of the relationship between competition control and the public interest regime may also inform the Secretary of State's exercise of her powers of intervention (for more details of which see the following section). At that point, however, information on the approach of the competition authorities to the relevant markets may be limited, so the Secretary or State may err on the side of caution in deciding to issue an intervention notice where the relevant markets are unclear.
- 7.6 The Secretary of State recognizes that in applying the broadcasting and cross-media public interest considerations, it will be necessary to analyse and consider all the relevant circumstances at the time, on a case-by-case basis. Analysis of these considerations is different from the economic analysis of competition issues, notwithstanding the overlap mentioned above. Nevertheless, the Secretary of State will expect OFCOM's report following an

intervention notice, the role of which is explained in paragraphs 4.10 – 11 above, to be evidence based, to reflect market research and to take account of stakeholders' views. The Secretary of State will then take this report, together with the OFT's report on the competition issues, into account in deciding whether to refer the particular media merger to the Competition Commission.

### **Plurality of persons with control of media enterprises**

- 7.7 The first of the broadcasting and cross-media public interest considerations set out in section 58(2C) refers to the need for a sufficient plurality of persons with control of media enterprises serving the same audience in any given area of the UK. This public interest consideration is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality.
- 7.8 In considering the impact of a merger on this consideration, the Secretary of State may assess the effect of the merger on a range of factors.
- 7.9 First and foremost, the Secretary of State may consider the impact of the merger on the number of persons controlling media enterprises serving the relevant audiences in any given area of the UK, with the object of securing that control of media enterprises continues to be spread across a sufficient number of persons. When assessing the number of persons controlling media enterprises post-merger, it would be relevant to take into account the number of other players serving that audience. This would include BBC and the Welsh Authority, where relevant, as well as owners of broadcasters established abroad and broadcasting into the UK under European Union licences.
- 7.10 However, bare numbers may not tell the whole story. It might be relevant to consider the audience shares of the media enterprises brought under common control by the merger and the audience shares of other media enterprises. This is because the Secretary of State considers that what constitutes a sufficient number of owners

controlling media enterprises in a given case may be affected by the relative audience shares that these enterprises hold. Audience shares can be assessed in relation to every different audience in the UK or locality of the UK served by these media enterprises. In assessing audience shares, it might also be relevant to consider the audience shares of other players serving the same audience.

- 7.11 Thus, the Secretary of State considers that sufficient plurality in this context refers to the number of persons controlling media enterprises, taking into account as appropriate relative audience shares. The Secretary of State will assess whether there is likely to be a significant reduction in plurality in relation to any relevant audience as a result of the merger.
- 7.12 For these purposes, the Secretary of State may define an audience in relation to a media enterprise in the manner she considers appropriate. In particular, she can define an audience: as any one of the audiences served by that enterprise, taking them separately; as all of the audiences served by that enterprise, taking them together; as a number of those audiences taken together in such group as the Secretary of State considers appropriate; or as any part of any of these audiences.<sup>55</sup> This enables the Secretary of State to treat different audiences as separate or group them together. The audience could, therefore, include cross media coverage and could include newspaper readership<sup>56</sup>. The criteria for deciding the composition of an audience shall be such as the Secretary of State considers appropriate and may include potential members of that audience<sup>57</sup>.
- 7.13 When assessing plurality, where a merger situation (i.e. a relevant merger situation or a special merger situation) involves two media enterprises serving the same audience as defined by the Secretary of State, then there is deemed to be a reduction in the number of media enterprises serving that audience for the purposes of the plurality assessment in subsection (2C)<sup>58</sup>. All such mergers, including those involving an increase in levels of control of such media enterprises, may be examined for the purposes of subsection (2C). This means that the Secretary of State can assess whether, as a result of the merger, there will still be a sufficient plurality of

---

<sup>55</sup> Section 58A(6) Enterprise Act 2002.

<sup>56</sup> Section 59A(8) Enterprise Act 2002.

<sup>57</sup> Section 58(A)(7) Enterprise Act 2002

<sup>58</sup> Section 58A(4) Enterprise Act 2002

persons with control of enterprises serving the relevant audience even though the number of enterprises serving that audience may be unchanged.

- 7.14 Where a number of media enterprises would fall to be treated as under common ownership or common control for the purposes of section 26 of the Enterprise Act 2002<sup>59</sup>, they are treated as being controlled by one person for the purpose of determining whether there is sufficient plurality of control of media enterprises<sup>60</sup>. This is because in assessing the effect of a merger on the sufficiency of plurality of persons with control of media enterprises, the Secretary of State needs to assess the total number of persons with control of media enterprises and what effect the merger will have on the plurality of media as a whole. Apart from the merging media enterprises, when looking across the spectrum to assess who has control of the remaining media enterprises, it is important to be able to look not just at the owners of those entities, but the controllers of those entities to get an accurate picture in relation to plurality in order to carry out the assessment relating to sufficiency of plurality.
- 7.15 A person can have common control over two or more enterprises under section 26 of the Enterprise Act 2002 if, in respect of each of the enterprises, he (amongst other things) owns the enterprise; he has a controlling interest in the enterprise (i.e. more than 50 % of the voting rights); he has control of the policy of the enterprise; or he has material influence over the policy of the enterprise.
- 7.16 When determining whether enterprises are under common control for the purposes of section 58(2C) of the Act, associated persons are treated as one person<sup>61</sup>. This provision enables interests held by family members, business partners etc to be aggregated<sup>62</sup>.

### **Range of broadcasting**

- 7.17 The second of the broadcasting and cross-media public interest considerations specified in section 58(2C) relates to the impact of a merger on broadcasting content in the UK. It refers to the need

---

<sup>59</sup> See OFT publication "*Merger: Substantive Assessment Guidance*" (May 2003) paragraphs 2.6 to 2.12

<sup>60</sup> Section 58A(5)

<sup>61</sup> Section 127(1)(aa) Enterprise Act 2002.

<sup>62</sup> See OFT publication "*Mergers: Substantive Assessment Guidance*" (May 2003) paragraphs 2.16 and 2.17

for the availability, throughout the UK, of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests.

- 7.18 This consideration is concerned with safeguarding the quality and range of broadcasting when mergers take place in order to ensure a diversity of programming and protect the interests of viewers and listeners. Assessment of whether a particular merger will reduce the range and quality of broadcasting in the UK may take into account a range of factors.
- 7.19 It might involve an assessment of the impact of the merger on the availability of broadcasting services which secure programmes dealing with a wide range of subject matters; which are likely to meet the needs and satisfy the interests of as many different audiences as practicable; which are properly balanced in nature and subject matter for meeting the needs and satisfying the interests of the available audiences; and which maintain high general standards with respect to the contents of the programmes included in them, the quality of the programme making and the professional skill and editorial integrity applied in the making of the programmes<sup>63</sup>.
- 7.20 In making this assessment, the Secretary of State may wish to take into account the media owner's past compliance with requirements on his other broadcasting enterprises to deliver a sufficient range and/or quality of broadcasting services in the UK. For example, she might consider compliance with qualitative public service broadcasting rules (e.g. tier three obligations under the Communications Act 2003) and radio format or localness obligations where relevant. The assessment might also include the media owner's record in respect of more quantitative obligations such as independent origination and European quotas (i.e. tier two obligations under the Communications Act 2003). In particular, the media owner's past compliance with programme origination obligations might be relevant.
- 7.21 All other material factors will also be taken into consideration. The media owner's plans for the broadcasting enterprise, including proposals for programme origination, programme content, genre

---

<sup>63</sup> cf section 264(4), Communications Act 2003.

or style of programming, as well as the overall innovation and ambition of the media owner's plans might all be considered relevant.

**(c) Commitment to the broadcasting standards objectives**

- 7.22 The third broadcasting and cross-media public interest consideration specified in section 58(2C) refers to the need for those carrying on media enterprises and those with control of such enterprises to have a genuine commitment to the broadcasting standards objectives set out in the Communications Act 2003. Under that Act OFCOM is required to secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public.
- 7.23 In the Secretary of State's view, the intention behind this consideration is to assess whether persons controlling or carrying on media enterprises post-merger are likely to comply with the spirit as well as the letter of the broadcasting standards set down in the Communications Act 2003. These standards objectives relate to the protection of minors; the prohibition of material likely to encourage crime or disorder; the due impartiality and accuracy of television and radio news services, and impartiality requirements more generally (see section 320 of the Communications Act 2003); the exercise of responsibility with respect to the content of religious programmes; the protection of the public from offensive and harmful material; the exclusion of prohibited political advertising; the prevention of misleading, harmful or offensive advertising and unsuitable sponsorship; the fulfillment of the international obligations of the United Kingdom as respects broadcast advertising; the prevention of undue discrimination between advertisers; and the prohibition of broadcasts of subliminal material<sup>64</sup>.
- 7.24 In considering the effect of a merger on the genuine commitment to broadcasting standards of those controlling or carrying on media enterprises, the Secretary of State may take into account a range of factors. They include the following.
- 7.25 First and foremost, the Secretary of State will consider the likelihood that there will be a genuine commitment to broadcast

---

<sup>64</sup> Section 319(2) Communications Act 2003.

standards by the person or persons who will control the merged media enterprise. The Secretary of State may wish to consider the past compliance of any other broadcasting enterprises controlled by this media owner with broadcasting standards in the UK. The media owner's previous compliance with OFCOM's broadcasting standards might therefore be relevant. In particular, it might be appropriate to consider the due impartiality and accuracy of news offered by the media owner's other broadcasting enterprises. Evidence of breaches of UK broadcasting standards may be taken into account. Another factor relevant to the acquiring media owner's commitment to standards objectives might be the compliance of any other broadcasting enterprises it controls with broadcasting standards in other geographic regions or jurisdictions. Similarly, the record of any non-broadcasting media enterprises compliance with standards applicable to those media enterprises might also be considered. This would include standards imposed under self-regulatory regimes.

- 7.26 All other material factors will also be taken into account. This might include comments, statements and any other plans made by the acquiring media owner which give an indication as to its commitment to UK broadcasting standards post-merger.

## **Policy on intervention in broadcasting and cross-media public interest cases**

- 8.1 In principle, the Secretary of State may intervene in any relevant or special merger situations involving media enterprises, including cross media mergers, where she believes that the broadcasting and cross-media public interest considerations are relevant.
- 8.2 However, as a matter of policy the Secretary of State expects that intervention will be limited to those areas where media ownership rules have been removed by the Communications Act 2003. The Secretary of State will therefore normally only consider intervening in the following areas:
- Mergers involving national newspapers with more than 20% of the market and the Channel 5 licence holder;
  - Mergers involving national newspapers with more than 20% of the market and a national radio service;
  - Mergers involving a change in control of the Channel 3 licence holder;
  - Mergers involving the national Channel 3 licence holder and a national radio service;
  - Mergers involving the Channel 5 licence holder and a national radio service;
  - Mergers involving two or more national radio services;
  - Mergers involving, on the one hand, owners from outside the European Economic Area (except where prior to the Communications Act 2003 there were no restrictions on non-European Economic Area ownership) and, on the other, any of Channel 3, Channel 5, digital and analogue radio licences.
- 8.3 If some of the remaining restrictions on media ownership were to be lifted in future, the Secretary of State would expect to consider intervention in these areas as well.
- 8.4 In addition, the Secretary of State does not believe that it would

normally be sensible or desirable to intervene in respect of mergers in areas where there are no media ownership restrictions (e.g. mergers involving satellite and cable television and radio services).

- 8.5 In relation to areas where there continue to be media ownership rules, the Secretary of State's policy is as follows.
- 8.6 For media owners within the European Economic Area, it would not normally be sensible or desirable to intervene on the grounds of the broadcasting and cross-media public interest considerations since the continuing rules will protect plurality (e.g. ownership of local sound broadcasting licences).
- 8.7 However, for media owners from outside the European Economic Area, the Secretary of State believes it would be sensible to consider intervening on the grounds of the broadcasting and cross-media public interest considerations, even where media ownership rules continue to apply, since foreign media ownership rules have now been removed completely.
- 8.8 In exceptional circumstances, the Secretary of State may consider it necessary to intervene in mergers in areas where there continue to be media ownership rules or where there have never been such rules. The Secretary of State will only consider intervening in such a merger where she believes that it may give rise to serious public interest concerns in relation to any of the three considerations.

## **Enforcement**

9.1 Under the FTA newspaper merger regime, the primary means of enforcement was through the requirement for prior consent, with criminal sanctions and nullity of the transaction applying in the event of a breach. With the removal of prenotification requirements and criminal sanctions, more extensive provision has been made in relation to remedies and enforcement powers in relation to the newspaper mergers. However, for the most part, the enforcement powers of the Secretary of State in relation to media public interest cases mirror the powers of the decision-making authority in relation to the mainstream merger regime.

## **Interim measures**

9.2 The OFT and the Secretary of State have interim powers that are intended to ensure that the effectiveness of a reference or subsequent remedies is not prejudiced by action taken by the parties in the period of consideration of a merger<sup>65</sup>.

## **Final measures**

9.3 Where the Secretary of State has made an adverse public interest finding, the final decision on remedies will be hers, although the Competition Commission must make recommendations in its report where it has decided that the merger operates, or may be expected to operate against the public interest<sup>66</sup>, and OFCOM may also give advice to the Secretary of State<sup>67</sup>.

9.4 The powers that will be available to the Secretary of State in the event of an adverse public interest finding are essentially equivalent to those applying to the mainstream Enterprise Act 2002 merger regime<sup>68</sup>. However, remedies to an adverse finding on the basis of a newspaper public interest consideration, or a broadcasting and cross-media public interest consideration in the case of cross media mergers involving newspapers, may be different in character to the remedies directed at competition detriments with which the Enterprise Act 2002 provisions are

---

<sup>65</sup> Paragraph 2, Schedule 7 Enterprise Act 2002.

<sup>66</sup> Section 47(7) Enterprise Act 2002.

<sup>67</sup> Section 106B(1) Enterprise Act 2002.

<sup>68</sup> See Schedule 8 to the Enterprise Act 2002.

principally concerned. As a result, specific provision has been made to allow all remedies that have been considered appropriate in the past in cases involving newspapers to continue to be used in the future<sup>69</sup>. The non-exhaustive list of such remedies<sup>70</sup> includes provisions:

- altering the constitution of a body corporate (whether in connection with the appointment of directors, the establishment of an editorial board or otherwise);
- requiring the agreement of the Secretary of State before the taking of a particular action (including the appointment or dismissal of an editor, journalist or directors or acting as a shadow director);
- attaching conditions to the operation of a newspaper;
- prohibiting consultation or co-operation between subsidiaries.

## Appeals

9.5 Any person aggrieved by a decision of the Secretary of State in relation to a merger raising a media public interest consideration may appeal to the Competition Appeal Tribunal, which shall apply the same principles as would be applied by a court on an application for judicial review<sup>71</sup>.

---

<sup>69</sup> See for example the conditions imposed on the consent given following the 1994 DMGT plc/T Bailey Forman Ltd Report (P/94/730, 5 December, 1994). See also the press release P/2002/203 of 28 March 2002 announcing the revocation of all but one of the conditions. The provisions relating to the editorial board were retained.

<sup>70</sup> See Paragraph 20A(4) of Schedule 8 to the Enterprise Act 2002.

<sup>71</sup> Section 120 Enterprise Act 2002.

## **Transitional provisions for newspaper mergers**

- 10.1 The transitional arrangements that will apply to newspaper mergers on commencement of the provisions of the Communications Act 2003 dealing with public interest merger cases are set out in paragraphs 59 to 62 of Schedule 18 to that Act.
- 10.2 Paragraph 59 provides that the new provisions will not apply to any transfer of a newspaper or of newspaper assets that has already taken place as at the commencement date of these provisions. In addition, any transfer for which an application for consent has been made, but not determined, at the date of commencement will continue to be considered under the special newspaper merger provisions in the FTA.
- 10.3 If, however, an application is made that falls within section 59(2) of the FTA because it is “expressed to depend” on the Secretary of State exercising a discretion in the FTA not to refer the transaction to the Competition Commission, then the effect of paragraph 59(2) of this Schedule is that only that “expressed to depend” application will fall within the transitional saving of the FTA provisions. If the Secretary of State’s consent is not given without a reference, but the parties then decide to pursue the merger after the new provisions take effect, it will then be treated as a merger under the Enterprise Act 2002, as amended by the Communications Act 2003.
- 10.4 Paragraph 62 sets out provisions applying to conditional consents that have been given under the FTA. On implementation of the media public interest merger provisions of the Communications Act 2003 existing consents will be unaffected and will continue in effect as consents given under the FTA. However, where these consents have conditions attached to them, such that the party concerned is subject to ongoing obligations, paragraph 62 provides that the Secretary of State may accept undertakings in lieu of the conditions on the consent. Acceptance of an undertaking will be at the Secretary of State’s discretion but, if accepted, any such undertaking would then be treated as equivalent to an undertaking given to the Secretary of State in a public interest case under the Enterprise Act 2002. Such undertakings could relate to competition or to general public interest obligations or both and so in deciding whether to accept such undertakings the Secretary of

State can, in particular, consult with the OFT or OFCOM or both.

## EC Merger Regulation

11.1 The assessment of the competition aspects of large international mergers which satisfy certain jurisdictional criteria falls to be considered by the European Commission's Competition Directorate under the EC Merger Regulation<sup>72</sup>. In any such qualifying case involving newspapers or broadcast media enterprises, therefore, the competition assessment would fall to be made by the European Commission, rather than by the UK competition authorities under the merger provisions of the Enterprise Act 2002. However, Member States may take appropriate measures to protect their legitimate interests, including plurality of the media<sup>73</sup>, and accordingly the public interest merger regime set out in the Enterprise Act 2002 may still apply in relation to the assessment of the impact of such transactions on the media public interest considerations<sup>74</sup>.

---

<sup>72</sup> Council Regulation 4064/89/EEC as amended

<sup>73</sup> Article 21(3) Council Regulation 4064/89/EEC as amended

<sup>74</sup> See in particular section 67 Enterprise Act 2002 and the Enterprise Act 2003 (Protection of Legitimate Interests) Order 2003.

## **Annex A - Persons to whom this consultation document is being sent**

**Adam Aldred  
Addleshaw Booth &Co**

**Christopher Grahame  
Advertising Standards Authority**

**Andrew Brown  
The Advertising Association**

**John Wotton  
Allen & Overy**

**Nigel Parr  
Ashurst Morris Crisp**

**Murdoch MacLennan  
Associated Newspapers Limited**

**Anthony Valcke  
Baker & Mckenzie**

**Mr Roger Bolton  
BECTU**

**Lex Fenwick  
Bloomberg**

**Pat Treacy  
Bristows**

**Gavyn Davies OBE  
British Broadcasting Corporation**

**Mads Andenas  
British Institute of International &  
Comparative Law**

**James Murdoch  
British Sky Broadcasting Group**

**Norman McLean  
Broadcasting Standards Commission**

**Chief Executive  
Cross Rhythms**

**Chief Executive  
Campaign for Press & Broadcasting  
Freedom**

**James Bethell  
Capital Radio plc**

**David Abdo  
Carlton Communications Plc**

**Gareth Littler  
Centre for Justice and Liberty**

**David Scott  
Channel 4 Television**

**Alex Noury  
Clifford Chance**

**Richard Taylor  
CMS Cameron McKenna**

**Clive Hollick  
United Business Media**

**Paul Brown  
Commercial Radio Companies Association**

**Geraldine Tickle  
Competition Law Association**

**Jonathan Dykes  
Confederation of British Industry**

**Nigel Smyth  
Confederation of British Industry Northern  
Ireland**

**Allan Williams  
Consumers' Association**

**Bruce Robinson  
Department of Enterprise, Trade and  
Investment**

**Chief Executive  
EMAP Performance**

**Chief Executive  
Endemol UK**

**Joan Harbison  
Equality Commission for Northern Ireland**

**Chief Executive  
Equity**

**Julia Woodward  
Eversheds**

**Chris Haslam  
Express Newspapers**

**Stephen Alambritis  
Federation of Small Businesses**

**Ted Osborne  
Federation of Small Businesses Northern  
Ireland**

**Roger Sands**  
**Foot Anstey Sargent**

**Alison Jones**  
**Freshfields Bruckhaus Deringer**

**Charles Allan**  
**Granada**

**Christy Swords**  
**London Weekend Television Ltd**

**Bob Phillis**  
**Guardian Media Group**

**Ralph Bernard**  
**GWR Group**

**Karen Vera**  
**Hammonds**

**Craig Pouncey**  
**Herbert Smith**

**Patricia Peter**  
**Institute of Directors**

**Linda Brown**  
**Institute of Directors Northern Ireland**

**Guy Nesdale**  
**ITC**

**Chief Executive**  
**IPA**

**Tim Bowdler**  
**Johnston Press**

**Katherine Holmes**  
**Joint Working Party of the Bars and Law Societies**

**Brian Sher**  
**Latham & Watkins**

**Louise Speke**  
**Law Society**

**John Bailie**  
**Law Society for Northern Ireland**

**Sarah Fleming**  
**Law Society of Scotland**

**Christine Noel**  
**Laytons**

**Bill Allan**  
**Linklaters**

**Michael Betton**  
**Lincs FM plc**

**Simon Politio**  
**Lovells**

**M J Donovan**  
**Marconi**

**Jason Phelps**  
**Martineau Johnson**

**Kiran Desai**  
**Mayer, Brown, Rowe & Maw**

**Michael Hutchings**

**Lois Heaver**  
**Monckton Chambers**

**Vice-Chancellor**  
**The Open University**

**John Milton Whatmore**  
**MediaWatch UK**

**Chief Executive**  
**MTV Networks Europe**

**John Smith**  
**Musicians Union**

**Cyrus Mehta**  
**Nabarro Nathanson**

**James King**  
**National Consumer Council**

**Jeremy Dear**  
**National Union of Journalists**

**Alison Clark**  
**News International Plc**

**David Newell**  
**Newspaper Society**

**Richard Wyatt**  
**Northcliffe Newspapers**

**Martin Coleman**  
**Norton Rose**

**Chief Executive**  
**Premier Christian Radio**

**Mike Jempson**  
**The Presswise Trust**

**David Vick**  
**Radio Authority**

**Chief Executive**  
**Radio Worldwide**

**Tom Glover**  
**Reuters**

**Richard Whish**  
**Kings College London School of Law**

**Steven Ball**  
**Richards Butler**

**Stephen Kon**  
**S J Berwin**

**Elan Closs Stephens**  
**S4C Chair**

**Donald Emslie**  
**Scottish Radio Holdings/  
Scottish Media Group**

**Martin Smith**  
**Simmons & Simmons**

**Morven Hadden**  
**Simmons & Simmons**

**Katia Yacobi**  
**Slaughter & May**

**Tony Livesey**  
**Sport Newspapers**

**Chief Executive**  
**Stirling Media Research Institute**

**Charles Burdick**  
**Telewest Communications**

**Mr George Halford**  
**Scottish Advisory Committee on  
Telecommunications**

**Kathleen Hanson**  
**National Council of Women of Great  
Britain**

**Voice of the Listener & the Viewer**

**Jonathan Rush**  
**Travers Smith Braithwaite**

**Sophie Cohen**  
**ITN**

**Arthur McCort**  
**The Highland Council**  
**Chief Executive**  
**PACT**

**Tony Morris**  
**The City of London Law Society**

**Charles Sinclair**  
**Daily Mail and General Trust**

**Brenda Haywood**  
**Telegraph Group Ltd**

**Sly Bailey**  
**Trinity Mirror plc**

**Chief Executive**  
**Public Voice**

**Anver Jeevanjee**  
**Cultural Diversity Advisory Group to the  
Media**

**John Pearson**  
**Virgin Radio**

**Guy Lougher**  
**Wragge & Co**

**The following Lords and MPs:**

**Lords:** Lord Puttnam, Lord McNally, Lord Bragg, Lord Crickhowell, Baroness Buscombe, Lord Hussey of North Bradley, Lord Gordon of Strathblane, Lord Fowler, Baroness Cohen of Pimlico, Lord Pilkington of Oxenford

**MPs:** Gerald Kaufman, James Arbuthnot, Stephen O'Brien, Julie Kirkbridge, Don Foster, John Whittingdale, John Greenway, Nick Harvey, John Grogan, Andrew Lansley, Paul Farrelly, Anne Picking, Brian White

**Copies of this document have also been placed in the House of Lords and House of Commons Libraries and sent to the Clerk of the House of Commons Culture, Media and Sport, Competition Commission, Competition Appeal Tribunal, the Office of Fair Trading and the**

**Office of Communications**

## **Annex B - The Consultation Criteria**

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>.

### **Comments or complaints**

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to Philip Martin, DTI Consultation Co-ordinator, Room 723, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or mail to: [Philip.Martin@dti.gsi.gov.uk](mailto:Philip.Martin@dti.gsi.gov.uk)