

**2003 No.3180**

**COMPETITION**

**The Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003**

*Made* - - - - - *8th December 2003*  
*Laid before Parliament* *8th December 2003*  
*Coming into force* - - - *29th December 2003*

The Secretary of State, in exercise of the powers conferred upon her by section 277 of the Enterprise Act 2002(a) and that section as applied by section 389(2) of the Communications Act 2003(b) hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003 and shall come into force on 29 December 2003.

(2) In this Order “the Act of 1973” means the Fair Trading Act 1973(c) and “the Act of 2002” means the Enterprise Act 2002.

**Consequential amendments**

2. The amendments, repeals and revocations specified in the Schedule to this Order shall have effect.

**Transitional provisions and savings**

3.—(1) The repeals and revocations in paragraphs 1 to 8 of the Schedule shall, subject to paragraph (2), not have effect in relation to—

- (a) a transfer of a newspaper or of newspaper assets (within the meaning given by section 57(2) of the Act of 1973) which has been made before the coming into force of this Order;
- (b) a proposed transfer of a newspaper or of newspaper assets in relation to which an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made before the coming into force of this Order; or
- (c) the making by the Secretary of State of references under section 32 of the Water Industry Act 1991(d) (duty to refer merger of water or sewerage undertakings) or any references so made.

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(a) 2002 c. 40.  
(b) 2003 c. 21.  
(c) 1973 c. 41.  
(d) 1991 c. 56.

(2) The repeals and revocations in paragraphs 1 to 8 of the Schedule shall have effect in relation to a proposed transfer of a newspaper or newspaper assets if—

- (a) an application for the consent of the Secretary of State under section 58 of the Act of 1973 has been made;
- (b) the application is expressed to depend on the operation of subsection (3) or (4) of that section;
- (c) no consent is given by the Secretary of State under subsection (3) or (4) of that section; and
- (d) no further application has been made for the consent of the Secretary of State under that section before the coming into force of this Order.

(3) The repeals and revocations in paragraphs 1 to 8 of the Schedule shall not have effect in relation to—

- (a) any case where the old law applies by virtue of paragraph 13 of Schedule 24 to the Act of 2002 or article 4 of the Enterprise Act 2002 (Commencement No.3, Transitional and Transitory Provisions and Savings) Order 2003(a); or
- (b) any monopoly reference referred to in paragraph 14(1) of Schedule 24 to the Act of 2002.

(4) In paragraph (3) “the old law” has the same meaning as in paragraph 13 of Schedule 24 to the Act of 2002.

(5) The repeal or revocation of a provision by any of paragraphs 1 to 8 of the Schedule does not affect a case where that provision would otherwise have effect by virtue of the operation of a transitional or transitory provision or savings made by or under the Act of 2002 in relation to a previous repeal or revocation.

*Stephen Timms,*  
Minister of State for Energy, E-Commerce and Postal Services,  
Department of Trade and Industry

8th December 2003

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(a) S.I. 2003/1397.

# SCHEDULE

## AMENDMENTS REPEALS AND REVOCATIONS

Article 2

### **Fair Trading Act 1973**

- 1.—(1) The Fair Trading Act 1973(a) is amended as follows.
- (2) Section 5 (principal functions of Commission) is repealed.
- (3) Section 77 (associated persons) is repealed.
- (4) Section 82 (general provisions as to reports) is repealed.
- (5) Section 83 (laying before Parliament and publication of reports) is repealed.
- (6) Section 85 (attendance of witnesses and production of documents) is repealed.
- (7) Section 87 (supplementary provisions as to laying reports before Parliament) is repealed.
- (8) In section 93B (false or misleading information) subsection (1)(a) is repealed.
- (9) In section 132 (offences by bodies corporate) the words “section 85(6)” are repealed.
- (10) In section 137 (general interpretation provisions)—
  - (a) in subsection (1) the definition of “assignment” is repealed;
  - (b) in subsection (2) the following definitions are repealed—
    - “commercial activities in the United Kingdom”;
    - “complex monopoly situation”;
    - “group”;
    - “merger reference”;
    - “monopoly reference”;
    - “newspaper merger reference”;
    - “price”;
    - “produce”;
    - “uncompetitive practices”;
    - “worker”;and
  - (c) subsection (7) is repealed.

### **Consumer Credit Act 1974**

- 2.—(1) The Consumer Credit Act 1974(b) is amended as follows.
- (2) In Schedule 4 paragraph 37 is repealed.

### **Competition Act 1980**

- 3.—(1) The Competition Act 1980(c) is amended as follows.
- (2) In section 15 (agricultural schemes: special provisions) subsection (1) is repealed.

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(a) 1973 c. 41.  
(b) 1974 c. 39.  
(c) 1980 c. 21.

### **Companies Act 1989**

- 4.—(1) The Companies Act 1989(a) is amended as follows.
- (2) In Schedule 20 paragraphs 12 and 13(1) are repealed.

### **Deregulation and Contracting Out Act 1994**

- 5.—(1) The Deregulation and Contracting Out Act 1994(b) is amended as follows.
- (2) In Schedule 11 paragraph 2(2) is repealed.

### **Competition Act 1998**

- 6.—(1) The Competition Act 1998(c) is amended as follows.
- (2) In Schedule 12 paragraph 1(10) to (13) is repealed.

### **Enterprise Act 2002**

- 7.—(1) The Enterprise Act 2002(d) is amended as follows.
- (2) In Schedule 25 paragraph 5(2) and (4)(a)(i) and (ii) is repealed.

### **Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000**

- 8.—(1) The Competition Act 1998 (Transitional, Consequential and Supplemental Provisions) Order 2000(e) is amended as follows.
- (2) In article 9 (Fair Trading Act 1973) paragraph (2) is revoked.

### **Uncertificated Securities Regulations 2001**

- 9.—(1) The Uncertificated Securities Regulations 2001(f) are amended as follows.
- (2) In Schedule 2 (prevention of restrictive practices) in paragraph 3(8) for the word “him” there is substituted the word “it”.

### **Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003**

- 10.—(1) The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(g) is amended as follows.
- (2) In article 1 (citation, commencement and interpretation) after the definition of “a European Intervention notice” there shall be inserted—
  - ““media public interest consideration” means any consideration which, at the time of the giving of the European intervention notice concerned, is specified in section 58(2A) to (2C) of the Act, or in the opinion of the Secretary of State, is concerned with broadcasting or newspapers and ought to be specified in section 58 of the Act.”.
- (3) In article 3 (European intervention notices under section 67 of the Act), in paragraph (2)(a)—
  - (a) after the word “OFT” there shall be inserted “or (if relevant) OFCOM”; and
  - (b) after the word “4” there shall be inserted “or (as the case may be) 4A”.

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(a) 1989 c. 40.  
(b) 1994 c. 40.  
(c) 1998 c. 41.  
(d) 2002 c. 40.  
(e) S.I. 2000/311.  
(f) S.I. 2001/3755.  
(g) S.I. 2003/1592.

- (4) In article 4 (initial investigation and report by OFT)—
- (a) in paragraph (3)(b) after the word “concerned” there shall be inserted “(other than a media public interest consideration)”;
  - (b) after paragraph (4) there shall be inserted—

“(4A) The report may, in particular, contain a summary of any representations about the case which have been received by the OFT and which relate to any media public interest consideration mentioned in the European intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under article 5.”.
- (5) After article 4 there shall be inserted—

**“Additional investigation and report by OFCOM: media mergers**

- 4A.**—(1) Paragraph (2) applies where—
- (a) the Secretary of State has given a European intervention notice in relation to a relevant merger situation under section 67 of the Act; and
  - (b) the European intervention notice mentions any media public interest consideration.
- (2) OFCOM shall, within such period as the Secretary of State may require, give a report to the Secretary of State on the effect of the consideration or considerations concerned on the case.
- (3) The report shall contain—
- (a) advice and recommendations on any media public interest consideration mentioned in the European intervention notice concerned and which is or may be relevant to the Secretary of State’s decision as to whether to make a reference under article 5; and
  - (b) a summary of any representations about the case which have been received by OFCOM and which relate to any such consideration.
- (4) OFCOM shall carry out such investigations as they consider appropriate for the purposes of producing a report under this article.”.
- (6) In article 5 (power of Secretary of State to refer the matter)—
- (a) in paragraph (1)(b) after the words “article 4” there shall be inserted “, and any report of OFCOM which is required by virtue of article 4A,”;
  - (b) in paragraph (4) the words “section 69(1) of the Act or” are revoked.
- (7) In article 8 (investigations and reports on references under article 5) after paragraph (2) there shall be inserted—
- “(2A) Where the report relates to a reference under article 5 which has been made after a report of OFCOM under article 4A, the Commission shall give a copy of its report (whether or not published) to OFCOM.”.
- (8) In article 14 (publicity requirements)—
- (a) after paragraph (2)(b) there shall be inserted—

“(ba) any report of OFCOM under article 4A which has been received by her;”;
  - (b) in paragraph (7)(a) after the words “article 4” there shall be inserted “, and any report of OFCOM under article 4A,”.
- (9) In Schedule 3 after paragraph 1(1)(l) there shall be inserted—
- “(la) section 104A (public consultation in relation to media mergers);”.
- (10) In Schedule 3 after paragraph 1(1)(m) there shall be inserted—
- “(ma) section 106B (general advisory functions of OFCOM);”.
- (11) In Schedule 3 after paragraph 1(1)(y) there shall be inserted—
- “(ya) section 119A (other general functions of OFCOM);”.

- (12) In Schedule 3 after paragraph 1(12) there shall be inserted—
- “(12A) Section 104A shall apply as if—
- (a) for the words in subsection (1) there were substituted—

“(1) Subsection (2) applies where the Commission is preparing a report under article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 which specifies a media public interest consideration.”; and
  - (b) in subsection (2) the words “or special merger situation” were omitted.”.
- (13) In Schedule 3 after paragraph 1(13)(a) there shall be inserted—
- “(ab) in subsection (1A) for the words “section 44A or 61A” there were substituted “article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.”.
- (14) In Schedule 3 after paragraph 1(13) there shall be inserted—
- “(13A) Section 106B shall apply as if—
- (a) for the words in subsection (1) there were substituted—

“(1) OFCOM may, in connection with any case on which they are required to give a report by virtue of article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003, give such advice as they consider appropriate to the Secretary of State in relation to—

    - (a) any report made by the Commission under article 8 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003; and
    - (b) the taking by the Secretary of State of enforcement action under Schedule 2 to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”;
  - (b) in subsection (2) for the words “section 44A or 61A” there were substituted “article 4A of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”; and
  - (c) in subsection (3) for the words “section 50 or 65” there were substituted “article 8 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.”.
- (15) In Schedule 3 after paragraph 1(20) there shall be inserted—
- “(20A) Section 119A shall apply as if in subsections (1) and (4) for the words “this Part” there were substituted “the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.”.
- (16) In Schedule 3 at the end of paragraph 2(2)(b)(ii) the word “and” shall be deleted and there shall be inserted—
- “(ba) in paragraph 20A(1)(a) for the words “intervention notice” there were substituted “European intervention notice” and in paragraph 20A(1)(a)(ii) for the words “relevant merger situation” there were substituted “European relevant merger situation”; and”.
- (17) In Schedule 4 before paragraph 15(2)(a) there shall be inserted—
- “(za) in paragraph 1 the reference in the definition of “newspaper merger reference” to section 45 of the Enterprise Act 2002 shall have effect as if it included a reference to article 5 of the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003”.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes consequential amendments in connection with the commencement of the media merger provisions of the Communications Act 2003, which amend the Enterprise Act 2002. It also makes minor amendments consequential upon the Enterprise Act 2002.

The Enterprise Act 2002 repealed the merger provisions of the Fair Trading Act 1973, except for the special newspaper merger provisions, which will be repealed on 29 December 2003. This Order repeals those provisions of the Fair Trading Act 1973, and related provisions, which are no longer required given the repeal of the special newspaper merger provisions.

Amendments were made to the Enterprise Act 2002 by the Communications Act 2003 so as to enable the Secretary of State to intervene in qualifying mergers on media public interest grounds. The amendments also introduced an advisory role for OFCOM (Office of Communications) in media mergers where the Secretary of State decides to intervene on media public interest grounds.

The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 provides for the taking of action by the Secretary of State where a European intervention notice has been given to protect legitimate interests as permitted by the European Merger Regulation (Council Regulation (EEC) No. 4064/89 of 21st December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No. 1310/97 of 30th June 1997. This Order makes consequential amendments to the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 to make provision for OFCOM's advisory role where a European intervention notice has been given invoking a media public interest consideration. These amendments mirror those amendments made to the public interest regime of the Enterprise Act 2002, by the Communications Act 2003.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business.

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STATUTORY INSTRUMENTS

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The Enterprise Act 2002 and Media Mergers (Consequential  
Amendments) Order 2003

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