



# Broadcasting Act 1990

## 1990 CHAPTER 42

### PART X

#### MISCELLANEOUS AND GENERAL

##### *Application of competition legislation*

**<sup>F1</sup>192 Application of provisions of Fair Trading Act 1973 to broadcasting and telecommunication services.**

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**Textual Amendments**

**F1** S. 192 repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, [Sch. 26](#); S.I. 2003/1397, art. 2(1), [Sch.](#) (with art. 8)

**<sup>F2</sup>193 Modification of networking arrangements in consequence of competition legislation**

- (1) Where [<sup>F3</sup>the relevant authority] makes a relevant order, the order may also provide for the modification of any networking arrangements to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) “relevant order” means—
  - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the provision of programmes for broadcasting in regional Channel 3 services; or

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- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of such programmes;  
or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [<sup>F4</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the provision of programmes for broadcasting in regional Channel 3 services.
- [<sup>F5</sup>(2A) In subsection (1), “relevant authority” means—
- (a) in relation to a relevant order falling within subsection (2)(a), the [<sup>F6</sup>Competition and Markets Authority] or (as the case may be) the Secretary of State;
- (b) in relation to a relevant order falling within subsection (2)(b), the [<sup>F6</sup>Competition and Markets Authority], the Secretary of State or (as the case may be) OFCOM.]
- (3) Expressions used in subsection (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.
- (4) In this section —
- “networking arrangements” means any such arrangements as are mentioned in [<sup>F7</sup>section 290(4) of the Communications Act 2003]; and
- “regional Channel 3 service” has the meaning given by section 14(6) above.]

#### Textual Amendments

- F2** S. 193 substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 6**; S.I. 2003/1397, art. 2(1), Sch.
- F3** Words in s. 193(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 65(2)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F4** Words in s. 193(2)(b) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 71(a)** (with art. 3)
- F5** S. 193(2A) inserted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 65(3)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F6** Words in s. 193(2A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 71(b)** (with art. 3)
- F7** Words in s. 193(4) substituted (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 15 para. 65(4)** (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

#### Modifications etc. (not altering text)

- C1** S. 193(2)(a) extended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 9**

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### Textual Amendments

F8 S. 194 repealed (1.3.2000) by S.I. 2000/311, art. 26(2)

### [<sup>F9</sup>194A Modification of Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision.

- (1) In this section a “relevant agreement” means an agreement—
- (a) which is made between all holders of regional Channel 3 licences for securing the appointment by them, in accordance with conditions included in their licences by virtue of [<sup>F10</sup>section 280 of the Communications Act 2003], of a single body corporate to be the appointed news provider for the purposes of [<sup>F11</sup>that section], or
  - (b) which is made between them and the body corporate appointed to be the appointed news provider for the purposes of [<sup>F11</sup>that section] for purposes connected with the appointment.

[ If, having sought the advice of the [<sup>F13</sup>CMA][<sup>F14</sup>and OFCOM], it appears to the <sup>F12</sup>(2) Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.

- (3) The conditions are that—
- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
  - (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
    - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of [<sup>F15</sup>section 280 of the Communications Act 2003], or
    - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of [<sup>F16</sup>that section of that Act of 2003].
- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
- (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
  - (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
  - (c) make a declaration, even though he has notified the [<sup>F17</sup>CMA][<sup>F18</sup>or OFCOM or both of them] of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the [<sup>F17</sup>CMA][<sup>F19</sup>and OFCOM] of his decision.

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- (7) <sup>F20</sup>Neither the <sup>F17</sup>CMA nor OFCOM may] exercise any Chapter III powers in respect of a relevant agreement, unless—
- <sup>F21</sup>(a) the Secretary of State has been notified by the <sup>F17</sup>CMA] or (as the case may be) by OFCOM of its or their intention to do so; and]
- (b) the Secretary of State—
- (i) has notified the <sup>F17</sup>CMA]<sup>F22</sup>and OFCOM] that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
- (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) <sup>F23</sup>Where the <sup>F17</sup>CMA] or OFCOM is or are proposing to exercise any Chapter III powers in respect of a relevant agreement, it or they must give the Secretary of State particulars of the agreement and such other information—
- (a) it considers or (as the case may be) they consider will assist] the Secretary of State to decide whether to exercise his powers under this section; or
- (b) as the Secretary of State may request.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
- “Chapter III powers” means the powers <sup>F24</sup>of the <sup>F25</sup>CMA] and of OFCOM under] Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;
- <sup>F26</sup>“CMA” means the Competition and Markets Authority;]
- <sup>F27</sup> ...
- <sup>F28</sup> .....
- “regional Channel 3 licence” has the same meaning as in Part I;
- and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.]]

#### Textual Amendments

- F9** Shoulder heading and s. 194A inserted (24.7.1996) by 1996 c. 55, s. 77(1)(2) (with s. 43(1)(6))
- F10** Words in s. 194A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(2)(a), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F11** Words in s. 194A(1) substituted (29.12.2003) by Communications Act 2003 (c. 21), ss. 372(2)(b), 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F12** S. 194A(2)-(11) substituted (1.3.2000) by 1998 c. 41, s. 3(1)(b), Sch. 2 Pt. III para. 4(2); S.I. 2000/344, art. 2, Sch.

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- F13** Word in s. 194A(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(2)** (with art. 3)
- F14** Words in s. 194A(2) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F15** Words in s. 194A(3)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(4)(a)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F16** Words in s. 194A(3)(b) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(4)(b)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F17** Word in s. 194A(5)-(8) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(2)** (with art. 3)
- F18** Words in s. 194A(5)(c) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(5)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F19** Words in s. 194A(6) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F20** Words in s. 194A(7) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(6)(a)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F21** S. 194A(7)(a) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(6)(b)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F22** Words in s. 194A(7)(b)(i) inserted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(3)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F23** Words in s. 194A(8) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(7)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F24** Words in s. 194A(9) substituted (29.12.2003) by Communications Act 2003 (c. 21), **ss. 372(8)**, 411(2) (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)
- F25** Word in s. 194A(9) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(3)(a)** (with art. 3)
- F26** Words in s. 194A(9) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(3)(c)** (with art. 3)
- F27** Words in s. 194A(9) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 72(3)(b)** (with art. 3)
- F28** Words in s. 194A(9) repealed (1.4.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 24(7)(d) (i), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)

**Changes to legislation:**

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