

SCHEDULES

SCHEDULE 1

Sections 3(1)(a) and 19(1)(a).

EXCLUSIONS: MERGERS AND CONCENTRATIONS

PART I

MERGERS

Enterprises ceasing to be distinct: the Chapter I prohibition

- 1 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) results, or if carried out would result, in any two enterprises ceasing to be distinct enterprises for the purposes of Part V of the Fair Trading Act 1973 (“the 1973 Act”), the Chapter I prohibition does not apply to the agreement.
- (2) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the merger provisions.
- (3) In sub-paragraph (2) “merger provisions” means the provisions of the agreement which cause, or if carried out would cause, the agreement to have the result mentioned in sub-paragraph (1).
- (4) Section 65 of the 1973 Act applies for the purposes of this paragraph as if—
- (a) in subsection (3) (circumstances in which a person or group of persons may be treated as having control of an enterprise), and
 - (b) in subsection (4) (circumstances in which a person or group of persons may be treated as bringing an enterprise under their control),
- for “may” there were substituted “must”.

Enterprises ceasing to be distinct: the Chapter II prohibition

- 2 (1) To the extent to which conduct (either on its own or when taken together with other conduct)—
- (a) results in any two enterprises ceasing to be distinct enterprises for the purposes of Part V of the 1973 Act), or
 - (b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),
- the Chapter II prohibition does not apply to that conduct.
- (2) Section 65 of the 1973 Act applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

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Transfer of a newspaper or of newspaper assets

- 3 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it constitutes, or would if carried out constitute, a transfer of a newspaper or of newspaper assets for the purposes of section 57 of the 1973 Act.
- (2) The Chapter II prohibition does not apply to conduct (either on its own or when taken together with other conduct) to the extent to which—
- (a) it constitutes such a transfer, or
 - (b) it is directly related and necessary to the implementation of the transfer.
- (3) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the transfer.

Withdrawal of the paragraph 1 exclusion

- 4 (1) The exclusion provided by paragraph 1 does not apply to a particular agreement if the Director gives a direction under this paragraph to that effect.
- (2) If the Director is considering whether to give a direction under this paragraph, he may by notice in writing require any party to the agreement in question to give him such information in connection with the agreement as he may require.
- (3) The Director may give a direction under this paragraph only as provided in sub-paragraph (4) or (5).
- (4) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (2), the Director may give a direction under this paragraph.
- (5) The Director may also give a direction under this paragraph if—
- (a) he considers—
 - (i) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
 - (ii) that he is not likely to grant it an unconditional individual exemption; and
 - (b) the agreement is not a protected agreement.
- (6) For the purposes of sub-paragraph (5), an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (7) A direction under this paragraph—
- (a) must be in writing;
 - (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

Protected agreements

- 5 An agreement is a protected agreement for the purposes of paragraph 4 if—
- (a) the Secretary of State has announced his decision not to make a merger reference to the Competition Commission under section 64 of the 1973 Act in connection with the agreement;
 - (b) the Secretary of State has made a merger reference to the Competition Commission under section 64 of the 1973 Act in connection with the

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agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger situation qualifying for investigation;

- (c) the agreement does not fall within sub-paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 65 of the 1973 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
- (d) the Secretary of State has made a merger reference to the Competition Commission under section 32 of the Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of the kind to which that section applies.

PART II

CONCENTRATIONS SUBJECT TO EC CONTROLS

- 6 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the Chapter I prohibition does not apply to the agreement if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (2) To the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the Chapter II prohibition does not apply to the conduct if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (3) In this paragraph—
“concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation; and
“Merger Regulation” means 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.