

Notice may be given to the same relevant merger situation so it is not therefore possible to modify or add considerations to the original notice.

JURISDICTION

The Secretary of State may make a reference to the Competition Commission, pursuant to article 5 of the Order, on the basis of the specified public interest consideration set out in section 58 of the Act, if he believes that it is or may be the case that –

(a) a European relevant merger situation has been created;

(b) one or more than one public interest consideration mentioned in the intervention notice is relevant to a consideration of the relevant merger situation concerned; and

(c) taking account only of the relevant public interest consideration or considerations concerned, the creation of that situation operates or may be expected to operate against the public interest.

ADVICE FROM THE OFT AND OFCOM AND OTHER REPRESENTATIONS

The OFT produced a report to the Secretary of State under Article 4(2) of the Order dated 30 December 2010. This report concluded that “there are arrangements in progress or in contemplation which, if carried into effect, will create a European relevant merger situation within the meaning of section 68(2) of the Act.”

Ofcom produced a report on 31 December 2010 under section 4A of the Act in which that advised on the relevance and effect of the public interest consideration set out in section 58(2C)(a) on this merger situation. In this report, Ofcom advised that “the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences.”

The OFT and the OFCOM reports have been published by the Secretary of State in accordance with Article 14(2) of the Order.

On 7 January 2011 the Secretary of State concluded that he was minded to refer the merger to the Competition Commission on the grounds that he considered that it may be the case that the merger may operate against the public interest in media plurality.

In coming to his decision, the Secretary of State has taken into account the reports provided to him by the OFT and OFCOM. Further, the information and range of views contained in the detailed summaries of representations made by the parties and third parties and included in the first OFCOM report of 31 December 2010 have been taken fully into account.

UNDERTAKINGS IN LIEU

The Secretary of State considered whether or not to accept undertakings in lieu of a reference to the Competition Commission pursuant to paragraph 3 of Schedule 2 to the Order. That paragraph provides that where the Secretary of State has the power to make a reference to the Competition Commission and otherwise intends to make such a reference, he may, instead of doing so, and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which may result from the relevant merger situation, accept such undertakings from the parties as he may consider appropriate.

The Secretary of State received an offer of undertakings from News Corp on 18 January 2011 and a revised offer of undertakings in lieu of a reference on 24 January 2011. The Secretary of State sought further advice from the OFT and OFCOM on the appropriateness of the undertakings under section 93 and 106A of the Act respectively who reported to him on both 11 February and 1 March. The advice from OFT and Ofcom were published by the Secretary of State in accordance with sections 107(3)(b) and (ba) and 107(9)(a) of the Act on 3 March 2011.

Having considered these reports, the Secretary of State announced on 3 March that he was minded to accept the undertakings in lieu of a reference to the Competition Commission on the grounds that he believed they would remedy, mitigate or prevent the public interest concerns in relation to media plurality identified in Ofcom's report into the media plurality issues raised by the merger. The consultation period on the undertakings ended on 21 March after which the Secretary of State consulted on revised undertakings with that further consultation period starting on 30 June and ending on 8 July. On 11 July News Corporation announced that it was withdrawing its offer of undertakings in lieu, as a result the Secretary of State announced his intention to refer the merger to the Competition Commission on the same day.

SECRETARY OF STATE'S DECISION

The Secretary of State accepts the decision of the OFT that it is or may be the case that a relevant merger situation has been created.

The Secretary of State believes that the public interest consideration set out in section 58(2C)(a) of the Act, that is, the need, in relation to every different audience in the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience, is or may be relevant to this case. In arriving at this decision, the Secretary of State has taken into account advice to this effect in the OFCOM Report, the reasons contained in that Report, and the detailed summaries of representations made by the parties and third parties.

Taking account only of the relevant public interest consideration, the Secretary of State believes that the creation of that situation operates or may be expected to operate against the public interest. Further, the Secretary of State believes that, as a result of the merger situation, there may not be a sufficient plurality of persons with control of the media enterprises providing news and current affairs to UK-wide cross-media audiences.

In arriving at the decision that the merger situation does or may be expected to operate against the public interest, the Secretary of State has taken into account in

particular the significance of News Corporation and BSkyB in providing news and current affairs to UK-wide cross-media audiences. He has also taken into account the conclusions of Ofcom's 31 December report, including their view that the increase in News Corporation's shareholding from a position of material control to full control results in the reduction in the number of persons with control of media enterprises; and that the proposed merger would bring together one of the three main providers of TV news with the largest providers of newspapers, and the effect of this on share of reference and reach as set out in the report.

He has also taken into account the events in recent weeks which have raised serious concerns about the extent of alleged wrongdoings and the degree of knowledge of senior management in News International.

Whilst it is for the Competition Commission to decide how it is to proceed in relation to its investigation and the preparation of the report, the Secretary of State would note a number of issues which he has considered may be relevant to the assessment of the specified public interest consideration and, should it prove necessary or appropriate, any remedies which might be considered. These are: the operation of Ofcom's on-going "fit and proper person" investigations and the extent to which these could have an impact on the assessment of media plurality; and the extent to which recent allegations are relevant to the credibility, sustainability or practicalities of any undertakings which might be offered by News Corporation or any other remedial arrangements which might be considered (should that prove to be appropriate or necessary in the light of the Competition Commission's analysis).

In light of the conclusions reached by the OFT and OFCOM in their Reports, together with the detailed summaries of the submissions received from the parties and third parties, the Secretary of State has decided that it is appropriate to refer the merger situation to the Competition Commission for a full investigation. The Secretary of State, therefore, refers this merger to the Competition Commission under Article 5(2) of the Order and in accordance with the Terms of Reference to be published separately.