[GB] New United Kingdom Competition Law Comes into Effect

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On 1 March 2000 the Competition Act 1998 came into effect in the UK. This represents a fundamental reform of competition law and may thus have important implications for the media.

The previous law was untidy and was based around tests of whether anti-competitive agreements and practices were against the public interest rather than concentrating directly on their anti-competitive effects. There was also an untidy relationship between the general competition law authorities and the regulators of particular sectors such as telecommunications, and incompatibility with the approach adopted in European law.

The 1998 Act works by incorporating, almost word-forword, the prohibitions contained in Articles 81 and 82 of the EC Treaty into UK law and making them applicable to activity which does not have a Community dimension. Thus Chapter I of the Act prohibits agreements or concerted practices which prevent, restrict and distort competition, and Chapter II prohibits abuse of a dominant position. Exemptions may be granted from Chapter I (but not Chapter II) by the Director General of Fair Trading and, in the case of block exemptions, the minister. Section 60 of the Act requires the competition authorities and the courts to apply an approach consistent with that of Community Law in deciding cases on these matters. In the case of monopolies, the existing powers for an investigation to take place by the Competition Commission are retained alongside the new Act to deal with large-scale or complex monopolies.

Enforcement procedures are strengthened by Chapter III of the Act. The main enforcement body is the Director General of Fair Trading, heading the Office of Fair Trading. An appeal lies from his decisions to a tribunal of the Competition Commission, with further appeal to the courts on questions of law. The Director General's powers of investigation are strengthened, and now include the power to mount "dawn raids" to gather information. Although it is not made explicit in the Act, it seems that it is also intended that private enforcement of the prohibitions may take place, for example through action by competitor companies in the courts. Power to enforce the prohibitions is also given to the public utility regulators, including the Director-General of Telecommunications, although such powers are not given to the broadcasting regulator, the Independent Television

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Commission.

The new Act leaves untouched the scrutiny of mergers, the area in which there has been greatest activity concerning the media. However the Department of Trade and Industry has proposed reforms there also which will reduce the role of ministers in the decision-making process and increase the concentration on competition questions rather than those of the general public interest.

Competition Act 1998.

Department of Trade and Industry, 'Mergers: A Consultation Document on Proposals for Reform'.

http://www.dti.gov.uk/cacp/cp/summary.htm

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