[GB] Regulator Issues Guidance on the Public Interest Test for Media Mergers

IRIS 2004-7:1/20

Tony Prosser
University of Bristol Law School

The Communications Act 2003 (see IRIS 2003-8: 10) contains a "plurality test" under which the minister may refer certain media mergers to the communications regulator, the Office of Communications (Ofcom), for advice on public interest considerations. This precedes the decision of the minister whether or not to refer the merger to the competition authorities on the grounds that it may be against the public interest, to negotiate undertakings in place of a reference, or to clear the merger. Ofcom has now issued guidance on the public interest test to be adopted in its advice.

The guidance stresses that Ofcom can only act when requested to do so by the minister through the latter issuing an "intervention notice"; the regulator will not advise the minister on the issue of such a notice. Moreover, where Ofcom has been asked to intervene, its advice will merely inform the minister's decision whether or not to refer the merger to the competition authorities; that decision lies solely with the minister who is not bound by the advice.

In broadcasting, the public interest test assesses whether the following are relevant to a merger: the need for a sufficient plurality of persons controlling the media enterprises in the UK or locally; the need for the availability of broadcasting of high quality calculated to appeal to a wide variety of tastes and interests; and the need for broadcasters to have a genuine commitment to the standards set out in the Act, including due impartiality of news and taste and decency. In newspaper mergers, the relevant issues are accurate presentation of news, the need for free expression of opinion and the need for a sufficient plurality of views.

The guidance also contains procedural advice. Although there is no statutory requirement to notify mergers to any of the authorities, advance notice is desirable and provides the right to a decision on whether to refer within four weeks (in some circumstances extendable up to eight weeks). Ofcom will provide confidential, non-binding advice in advance to the merging parties on the likelihood of its advising a reference to the competition authorities or the negotiation of undertakings. It will also provide more detailed confidential guidance to the parties where the minister is minded to intervene on public interest grounds. Where Ofcom is asked for its advice by the minister, it will seek comments from third parties and will hold a meeting with the merging parties and their advisers. Details are also provided in the guidance of the information which

© European Audiovisual Observatory (Council of Europe) 2026

will be required from them.

Ofcom, "Ofcom Guidance for the Public Interest Test for Media Mergers", (2004)

http://www.ofcom.org.uk/codes_guidelines/broadcasting/media_mergers/?a=87101

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026