

Draft Regulations laid before Parliament under section 124 of, and paragraph 15 of Schedule 6B to, the Enterprise Act 2002 (c. 40), and section 335 of the Digital Markets, Competition and Consumers Act 2024 (c. xxx) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

No.

COMPETITION

**The Enterprise Act 2002 (Mergers Involving Newspaper Enterprises
and Foreign Powers) Regulations 2024**

Made - - - -

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 124 of, and paragraph 15 of Schedule 6B to, the Enterprise Act 2002, and section 335 of the Digital Markets, Competition and Consumers Act 2024.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Enterprise Act 2002 (Mergers Involving Newspaper Enterprises and Foreign Powers) Regulations 2024.

(2) These Regulations come into force the day after the day on which they are made.

(3) The amendments made by regulations 2 and 3 are to be treated as having come into force on 13 March 2024.

(4) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Permitted mergers

2.—(1) Schedule 6B to the Enterprise Act 2002 (control or influence of a person by a foreign power) is amended as follows.

(2) In Part 1 (conditions for control or influence), after paragraph 1(6) insert—

“(7) This paragraph is subject to Part 1A.”

(3) After paragraph 2 insert—

“PART 1A

EXCEPTIONS

Introduction

2A This Part applies where a foreign power would (apart from this Part of this Schedule) be treated as being able to control or influence the policy of a person

(a “newspaper owner”) carrying on a newspaper enterprise by virtue of condition 1 or condition 2 in paragraph 1 (respectively, “the shares condition” and “the voting rights condition”).

State owned investors

- 2B (1) A foreign power is not to be treated as being able to control or influence the policy of a newspaper owner by virtue of the shares condition or the voting rights condition where—
- (a) any shares or, as the case may be, voting rights that the foreign power holds in the newspaper owner are held by the foreign power indirectly via a state owned investor acting on behalf of the foreign power (see paragraph 2C), and
 - (b) sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies where the state owned investor holds, directly or indirectly, no more than 5% of the shares or, as the case may be, the voting rights in the newspaper owner.
- (3) This sub-paragraph applies where—
- (a) turnover from the newspaper enterprise accounts for no more than 20% of the total value of the newspaper owner’s global turnover in the relevant period,
 - (b) the state owner investor does not hold any shares or voting rights in the newspaper owner directly, and
 - (c) the state owned investor holds, indirectly, no more than 10% of the shares or, as the case may be, the voting rights in the newspaper owner.
- (4) For the purposes of sub-paragraph (3)(a)—
- (a) the “relevant period” is the most recent qualifying period of 12 months in respect of which the CMA considers that it is able to make an estimate of—
 - (i) the total value of the newspaper owner’s global turnover, and
 - (ii) the value of the turnover from the newspaper enterprise, and
 - (b) the total value of the newspaper owner’s global turnover is the total value of the newspaper owner’s turnover in connection with any of its activities.
- (5) A period of 12 months is a qualifying period only if it ends in the period of 18 months ending with the date when the CMA gives its report under section 70B.
- (6) In applying this paragraph, where shares or voting rights are held by different state owned investors that are owned by one or more foreign powers of the same country or territory, those state owned investors are to be treated as if they were a single state owned investor (and, accordingly, their holdings of shares or voting rights are to be treated as if they were single holdings of shares or voting rights).
- 2C (1) For the purposes of paragraph 2B, a person is a state owned investor acting on behalf of a foreign power where—
- (a) condition 1 or 2 is met, and
 - (b) conditions 3 to 5 are met.

- (2) Condition 1 is that the foreign power holds, directly or indirectly—
 - (a) 100% of the shares in the person,
 - (b) 100% of the voting rights in the person, or
 - (c) the right to appoint or remove a majority of the officers of the person.
- (3) Condition 2 is that—
 - (a) the trustees of a trust, or the members of a partnership, unincorporated association or other entity, that is not a legal person under the law by which it is governed meet one or more of the requirements set out in sub-paragraph (4), in their capacity as such, in relation to the person, and
 - (b) the foreign power directs or controls the activities of that trust or entity (in whole or in part).
- (4) The requirements are that the trustees or members—
 - (a) have the right to direct or control, or actually direct or control, the person's activities (in whole or in part);
 - (b) hold, directly or indirectly, 100 per cent of the shares in the person;
 - (c) hold, directly or indirectly, 100 per cent of the voting rights in the person;
 - (d) hold the right, directly or indirectly, to appoint or remove a majority of the officers of the person.
- (5) Condition 3 is that—
 - (a) the principal activity of the person is to make or manage investments, and
 - (b) the activities of the person include making or managing investments in countries or territories other than the country or territory of the foreign power (“the overseas investments”).
- (6) Condition 4 is that the principal source of the funds for the overseas investments is the foreign power or another foreign power of the same country or territory as the foreign power.
- (7) Condition 5 is that the sole purpose of the overseas investments is to benefit—
 - (a) the foreign power or the public or a section of the public of the country or territory of the foreign power, or
 - (b) where the overseas investments are made or managed for the purposes of a public pension fund of the country or territory of the foreign power, the beneficiaries of that fund.

Associated persons

- 2D (1) A foreign power is not to be treated as being able to control or influence the policy of a newspaper owner by virtue of the shares condition or the voting rights condition where—
 - (a) the foreign power is treated as holding shares or, as the case may be, voting rights in the newspaper owner as a result of those shares or voting rights being held by a person who is associated with the foreign power by virtue of being within section 127(4)(a), (b) or (c) (relatives, trustees etc), and

- (b) the person within section 127(4)(a), (b) or (c) holds no more than 0.1% of the shares or, as the case may be, the voting rights in the newspaper owner.
- (2) A foreign power is not to be treated as being able to control or influence the policy of a newspaper owner by virtue of the shares condition where—
- (a) the foreign power is treated as holding shares in the newspaper owner as a result of those shares being held by a person who is associated with the foreign power by virtue of being within section 127(4)(a), (b) or (c), and
 - (b) the person within section 127(4)(a), (b) or (c) holds those shares via an investment fund which meets the genuine diversity of ownership condition.
- (3) For the purposes of sub-paragraph (2)(b)—
- (a) “investment fund” means—
 - (i) an investment fund within the meaning given by section 236(1) of the Finance (No. 2) Act 2023 (investment funds and investment entities),
 - (ii) arrangements that amount to a collective investment scheme (see section 235 of the Financial Services and Markets Act 2000), or
 - (iii) a collective investment undertaking within the meaning of regulation 3 of the Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), and
 - (b) an investment fund meets the genuine diversity of ownership condition where—
 - (i) it meets conditions A to C in regulation 75 of the Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001) (read with regulation 76 of those Regulations), or
 - (ii) paragraph (5) of that regulation applies to it.”

Miscellaneous

3. In section 120 of the Enterprise Act 2002 (review of decisions under Part 3), in subsection (2), in paragraph (b), at the end insert “, and

- (c) includes a failure to take a decision permitted or required by Chapter 3A (mergers involving newspaper enterprises and foreign powers).”