



Rt Hon Patricia Hewitt MP
Secretary of State for Trade & Industry
Department of Trade & Industry
1 Victoria Street
London
SW1H 0ET

6 April 2005

Dear Secretary of State

**Changes to competition law with effect from 1 May 2005
and impact on newspaper and magazine distribution**

I am writing to you on a matter of extreme urgency and importance to the newspaper and magazine industry to appeal for your intervention to provide for the industry the period of adjustment you have previously indicated we should have.

On 1st March last year when you announced your decision to proceed with the realignment of EU and UK competition law and repeal the current exclusion for vertical agreements from the scope of the Competition Act you said:

"The Government is encouraging all parties in the newspaper and magazine industries to work together and to seek advice from the OFT in considering whether to make any changes to their agreements to achieve full compliance with competition law.

"The Government believes it would be appropriate to allow a transitional period of one year from 1st May 2004 so that the repeal of the domestic exclusion for vertical agreements will not take effect until 1st May 2005. The transitional period gives a breathing space so that any changes are made in a managed way.

"This process will ensure the outcome that is best for the consumer whilst bringing a greater degree of certainty in the long-run for the publishers, distributors and retailers."

As you said in your announcement of 9 August last year: *"Members of the newspaper (and magazines) industry are currently engaged in discussions with the OFT to ensure the continued compatibility with competition law of existing newspaper distribution agreements"*

Unfortunately this advice has not yet been forthcoming and so there will be no breathing space to enable any changes to be made in a managed way before the repeal of the order.

As you will appreciate our members are most concerned about the status of their agreements when the exclusion order expires on 1st May as they do not know what changes may be necessary and there is no transitional period within which they may make any changes in a managed way.

As I am sure you will also appreciate this is now a matter of urgency. Accordingly we would be most grateful if you would advise us how to enable our members to make any changes (when they know what the changes may be following any necessary consultation process) in a managed way in accordance with the statement that you made last year.

Yours sincerely

A handwritten signature in black ink, appearing to read 'IAN LOCKS', written over a horizontal line.

IAN LOCKS
CHIEF EXECUTIVE

PUBLICATION OF GOVERNMENT RESPONSE TO CONSULTATIONS ON MODERNISATION OF EU COMPETITION LAW

Trade and Industry Secretary Patricia Hewitt today announced her decision to proceed with the realignment of EU and UK competition law and repeal the current exclusion for vertical agreements from the scope of the Competition Act.

Today's decision completes the Government's response to two consultations on the modernisation of competition law. Plans to implement Regulation 1/2003 EC will place national competition authorities and courts in the driving seat for the bulk of competition law enforcement and give them a stronger role in ensuring that markets across Europe work fairly. A subsequent realignment of the UK Competition Act 1998 is necessary to ensure that competition authorities act consistently when they are applying UK or EC law.

In January, the Government published the bulk of its response to the consultations, but delayed announcing a decision on whether to repeal the verticals exclusion, which will apply across all sections of business and industry. This was done following representations from the newspaper and magazine sectors who had particular concerns about their sector.

Vertical agreements are agreements between firms at different levels of the supply chain; in the newspaper industry these arrangements provide for arrangements between publishers and distributors to distribute to exclusive regional areas.

A 30 period was granted to allow the various parties to discuss among themselves concerns about the effects of a repeal. This was done with the help of the OFT and an independent mediator.

The Government is encouraging all parties in the newspaper and magazine industries to work together and to seek advice from the OFT in considering whether to make any changes to their agreements to achieve full compliance with competition law.

Ms Hewitt said:

"The Government's approach to modernisation is to remove or reduce any differences between EU and UK competition law that may present an obstacle to the effective operation of the regime in the UK.

"As part of this we have decided that certain exclusions from the Competition Act should be removed, in particular the exclusion for vertical agreements.

"The Government believes it would be appropriate to allow a transitional period of one year from 1st May 2004 so that the repeal of the domestic exclusion for vertical agreements will not take effect until 1st May 2005. The transitional period gives a breathing space so that any changes are made in a managed way.

"This process will ensure the outcome that is best for the consumer whilst bringing a greater degree of certainty in the long-run for the publishers, distributors and retailers."

Notes to Editors

1. The first consultation detailed the Government's proposals to give effect to the regulation and for the re-alignment of the Competition Act 1998. The second detailed proposals for exclusions and exemptions from the Competition Act 1998 in light of Regulation 1/2003 EC. The Government will issue a consolidated response to the two consultations on Modernisation and a consolidated RIA.
2. The necessary legislative changes will be made by statutory instrument, which will come in to effect on 1 May 2004 alongside reforms to the EC regime agreed at the Competitiveness Council on 26 November 2002. The transitional periods applying to the removal of the verticals exclusion will begin at that point.
3. Regulation 1/2003 will replace Council Regulation 17/62, which implements Articles 81 and 82 of the Treaty of Rome, on 1 May 2004. Article 81 prohibits agreements, decisions and concerted practices by undertakings that prevent, restrict or distort competition unless they meet certain exemption criteria. Article 82 prohibits the abuse of a dominant market position by undertakings.
4. The new Regulation has four main effects:-
 - a. It abolishes the current system of notifications under which businesses must notify their restrictive agreements to the Commission in order to obtain an exemption under Article 81(3) and legal certainty of their validity. It replaces notifications with a "legal exception" regime under which agreements which fall within the prohibition in Article 81 but which meet the exemption criteria in Article 81(3) are automatically exempt and legally enforceable at the outset.
 - b. It devolves powers to national competition authorities (NCAs) and courts in Member States to apply Articles 81 and 82 in full and requires them to apply these Articles to any case where there is an effect on inter-state trade. National law may be applied in parallel but NCAs and courts in Member States must not make decisions under national law, the outcome of which differs from that which would be reached under Community law.
 - c. It provides for Member States to co-operate closely in enforcing competition law by exchanging information and conducting investigations on each other's behalf. To facilitate this process, a European Competition Network (ECN) has been established.
 - d. It strengthens and clarifies the Commission's powers of investigation, widens the range of available remedies and provides tougher sanctions for procedural infringements.
5. Some consequential changes to the UK regime will be required, and other changes were proposed to align the domestic competition regime as far as possible with the new European regime. These issues were largely addressed in the consultation document published on 1 April.
6. DTI published a separate consultation reviewing exclusions and exemptions. This considered four areas of exemptions: block exemptions; vertical agreements; competition scrutiny regimes; and agreements given directions under section 21(2) of the Restrictive Trade Practices Act 1976.
7. Responses to the two consultations were received from law firms, regulators, companies and individuals.
8. The Government is drafting a Statutory Instrument, under powers in section 2 of the European Communities Act 1972 and section 209 of the Enterprise Act

2002, which will amend the Competition Act. We expect to bring this Statutory Instrument into force to coincide with the coming into force of the Regulation.

9. The new Regulation was announced in DTI Press Notice P/2002/741 on 26 November 2002. The 1 April consultation was announced in DTI Press Notice P/2003/221 and the 17 June consultation in DTI Press Notice P/2003/355.

10. The proposal to repeal the verticals exclusion was contained in the July 2001 Productivity and Enterprise White paper, then subsequently in the June 2003 Consultation Document – “Modernisation – a consultation on the Government’s proposals for exclusions and exemptions from the Competition Act 1998 in light of Regulation 1/2003 EC.”

11. The Government announced its response to all issues in its April and June consultations apart from the verticals exclusion on January 16th 2004, but agreed to delay the decision on verticals pending completion of an agreed 30-day period for the newspaper and magazine sectors to discuss their concerns.

Details can be found at www.dti.gov.uk/ccp/consultations.htm