STATUTORY INSTRUMENTS

1990 No. 1660

MONOPOLIES AND MERGERS

The Merger (Fees) Regulations 1990

Made - - - -	*9th August 1990*
Laid before Parliament	*13th August 1990*
Coming into force	*1st October 1990*

The Secretary of State for Trade and Industry, in exercise of the powers conferred on him by section 152 of the Companies Act 1989(**a**), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Merger (Fees) Regulations 1990 and shall come into force on 1st October 1990.

(2) In these Regulations–

(a) "the Act" means the Fair Trading Act 1973(**b**);

(b) a reference to a numbered Regulation shall be construed as a reference to the Regulation bearing that number in these Regulations.

(3) These Regulations shall be construed as one with Part V of the Act and as if sections 67 and 77 of the Act applied for the purpose of construing these Regulations.

Matters in respect of which fees are payable

2. A fee of the amount specified in Regulation 4 shall be payable in respect of–

(a) subject to Regulation 3(1), an application for the consent of the Secretary of State under section 58(1) of the Act to the transfer of a newspaper or of newspaper assets;

(b) the giving of a merger notice under section 75A(1) of the Act(**c**);

(c) the making by the Secretary of State of a merger reference to the Commission under section 29(1) of the Water Act 1989(**d**);

(d) subject to Regulation 3(2), the making by the Secretary of State of a merger reference to the Commission under section 64 or 75 of the Act;

(e) subject to Regulation 3(2), the announcement by the Secretary of State of his decision not to make a merger reference in any case where, at the time the announcement is made, he would, under section 64 or 75 of the Act, have the power to make such a reference.

Circumstances in which certain fees are not payable

3.—(1) A fee shall not be payable under Regulation 2(a) in respect of an application for the consent of the Secretary of State under section 58(1) of the Act to the transfer of a newspaper or of newspaper assets–

(a) where an application has been made by the same person within the previous six

(**a**) 1989 c.40.
(**b**) 1973 c.41.
(**c**) Section 75A was inserted by section 14o of the Companies Act 1989.
(**d**) 1989 c.15.

months in relation to the transfer to the same person of the same newspaper or the same newspaper assets and that application was expressed to depend on the operation of section 58(3) or (4) of the Act; or

(b) the value of the newspaper or newspaper assets transferred is less than £100,000.

(2) A fee shall not be payable under Regulation 2(d) in respect of a merger reference or under Regulation 2(e) in respect of the announcement by the Secretary of State of his decision not to make a merger reference–

(a) where a fee has been paid under Regulation 2(b) in respect of a merger notice given in relation to proposed arrangements and either–

(i) the merger reference or, as the case may be, the Secretary of State's decision not to make a merger reference is made in relation to those arrangements, or

(ii) if the fee under Regulation 2(b) became due within the previous six months, the result of carrying those arrangements into effect is the creation or possible creation of the merger situation qualifying for investigation which is the subject of the merger reference or, as the case may be, the Secretary of State's decision not to make a merger reference;

(b) where the creation or possible creation of the merger situation depends or would depend on the operation of section 65(3) or (4)(b) of the Act.

Amount of fees

4. The amount of the fee payable under Regulation 2 shall be–

(a) in a case falling within paragraph (a) of that Regulation–

(i) where the average circulation per day of publication of any of the newspapers concerned in the transfer is more than 25,000, £10,000, and

(ii) where sub-paragraph (i) above does not apply, £5,000;

(b) in a case falling within paragraph (b), (c), (d) or (e) of that Regulation–

(i) where the value of the assets which have been taken over, or, as the case may be, which it is proposed or contemplated should be taken over, does not exceed £30 million, £5,000,

(ii) where the value of such assets exceeds £30 million but does not exceed £100 million, £10,000,

(iii) where the value of such assets exceeds £100 million, £15,000.

Person by whom fees are payable

5.—(1) In a case falling within Regulation 2(a), the fee shall be payable by the person who makes the application for the consent of the Secretary of State under section 58(1) of the Act.

(2) In a case falling within Regulation 2(b), the fee shall be payable by the person who gives the merger notice.

(3) Subject to paragraph (5) below, in a case falling within Regulation 2(c), (d) or (e), the fee shall be payable–

(a) where it appears to the Secretary of State that it is or may be the fact that–

(i) there is a merger situation to which section 65(1)(a) of the Act applies, or

(ii) arrangements are in progress or in contemplation which if carried into effect would result in the creation of a merger situation to which that provision of the Act would apply, or

(iii) there is a situation to which either paragraph (a) or (b) of subsection (1) of section 29 of the Water Act 1989 applies,

by the person, or group of persons, who has or have acquired or will, if those arrangements are carried into effect, acquire either–

(iv) a controlling interest in one of the enterprises which was or is involved in the merger or prospective merger and in which he or they did not previously have such an interest, or

(v) in the case of such an enterprise carried on by a body corporate in which he or they did not previously have a controlling interest

in that body corporate; or

(b) where it appears to the Secretary of State that it is or may be the fact that–

(i) there is a merger situation to which section 65(1)(b) of the Act applies, or

(ii) arrangements are in progress or in contemplation which if carried into effect would result in the creation of a merger situation to which that provision of the Act would apply,

by the person or group of persons who–

(iii) carried on or are carrying on the enterprise involved in the merger or prospective merger which did not cease or will not, if those arrangements are carried into effect, cease to be carried on at all, or

(iv) had or have a controlling interest in that enterprise, or

(v) in the case where that enterprise was or is carried on by a body corporate, had or have a controlling interest in that body corporate.

(4) In a case where paragraph (3) above applies to more than one person, whether by virtue of them being treated as one by the operation of section 77 of the Act or otherwise, the persons to whom it applies shall be jointly and severally liable for the fee in that case.

(5) Where a fee is payable under Regulation 2(c) in respect of a merger reference under section 29(1) of the Water Act 1989, under Regulation 2(d) in respect of a merger reference under section 64 or 75 of the Act or under Regulation 2(e) in respect of the announcement by the Secretary of State of his decision not to make such a merger reference but the person specified in subparagraph (3) above is not–

(a) a British citizen, a British Dependant Territories citizen, a British Overseas citizen or a British National (Overseas); or

(b) a body corporate incorporated under the law of the United Kingdom or of a part of the United Kingdom; or

(c) a person carrying on business in the United Kingdom, either alone or in partnership with one or more persons;

he shall not be liable to pay the fee unless the merger situation or, as the case may be, the arrangements in progress or in contemplation result, wholly or partially, from anything done by him within the United Kingdom.

Person to whom fees are payable

6.—(1) In a case falling within Regulation 2(a), the fee shall be payable to the Secretary of State.

(2) In a case falling within Regulation 2(b), (c), (d) or (e), the fee shall be payable to the Director.

Time when fees are payable

7.—(1) In a case falling within Regulation 2(a), the fee shall be payable at the time when the application for the consent of the Secretary of State under section 58(1) of the Act is made.

(2) In a case falling within Regulation 2(b), the fee shall be payable at the time when the merger notice is given.

(3) In a case falling within Regulation 2(c), (d) or (e), the fee shall be payable when the Secretary of State publishes the merger reference or, as the case may be, announces his decision not to make a merger reference.

Repayment of fees

8. In a case falling within Regulation 2(b)–

(a) the Director may repay the whole of the fee where the notified arrangements would not, if they were carried into effect, result in the creation of a merger situation qualifying for investigation; and

(b) the Director shall repay the whole of the fee where he rejects the merger notice under section 75B(7)(d) of the Act (rejection of merger notice where the notified arrangements are or would result in a concentration with a Community

dimension)(a).

John Redwood
Parliamentary Under Secretary of State,
Department of Trade and Industry

9th August 1990

(a) Section 75B was inserted by section 146 of the Companies Act 1989; paragraph (d) was inserted by the EEC Merger Control (Consequential Provisions) Regulations 1990 (S.I. 1990/1563).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for fees to be payable in connection with the exercise by the Secretary of State, the Director General of Fair Trading and the Monopolies and Mergers Commission of their functions under Part V of the Fair Trading Act 1973 ("the Act") relating to the supervision of actual and prospective mergers.

Regulation 2 provides that fees are to be payable in five cases: in respect of an application for the Secretary of State's consent to the transfer of a newspaper or of newspaper assets; in respect of a prenotification of a merger under section 75A(1) of the Act; in respect of a decision to make a merger reference under section 29(1) of the Water Act 1989; in respect of a merger reference under section 64 or 75 of the Act; and in respect of the announcement by the Secretary of State of his decision not to make a merger reference.

Regulation 3 specifies certain cases in which fees are not payable in respect of applications for the Secretary of State's consent to the transfer of a newspaper or of newspaper assets; merger references under section 64 or 75 of the Act and announcements of decisions by the Secretary of State not to make such references. Regulation 4 specifies the amount of the fee payable in each case. Provision is also made as to the persons by whom the fee is to be payable (Regulation 5) and to whom fees are payable (Regulation 6), and the time when fees are payable (Regulation 7). Provision is also made for the refund of fees payable in respect of merger prenotifications where the notice is rejected because the notified arrangements are or would result in a concentration with a Community dimension (within the meaning of Council Regulation (EEC) No. 4064/89) or where the notified arrangements would not, if carried into effect, result in a merger situation qualifying for investigation (Regulation 8).

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