

APPENDIX 1
(referred to in paragraph 2)

Terms of reference

1. On 9 April 1999 the Department of Trade and Industry sent the following merger reference to the Commission:

Whereas it appears to the Secretary of State that:

A. it is or may be the fact that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation, as defined in section 64(8) of the Fair Trading Act 1973 ("the Act") in that:

- (a) enterprises carried on by or under the control of NTL Incorporated will cease to be distinct from enterprises carried on by or under the control of Newcastle United plc (a body corporate incorporated in the United Kingdom); and
- (b) the value of the assets to be taken over exceeds £70 million;

Now, therefore, the Secretary of State, in exercise of his powers under sections 64, 69(2) and 75(1) of the Act, hereby refers to the Competition Commission ("the Commission") for investigation and report within the period ending on 9 July 1999 the following questions:

- (i) whether arrangements are in progress or in contemplation as described in paragraph (a) above which, if carried into effect, will result in the creation of a merger situation qualifying for investigation;
- (ii) if events so require, whether the actual results of those arrangements are the creation of such a situation; and
- (iii) if so, in either case, whether the creation of that situation may be expected to operate or (if events so require) operates against the public interest.

In relation to the questions in paragraphs (i) and (ii) above the Commission shall exclude from consideration one of paragraphs (a) and (b) of section 64(1) of the Act if they find the other satisfied; and

B. it is or may be the fact that a merger situation qualifying for investigation, as defined in section 64(8) of the Act, has been created in that:

- (a) enterprises carried on by or under the control of NTL Incorporated have within the four months preceding the date of this reference ceased to be distinct from enterprises carried on by or under the control of Newcastle United plc (a body corporate incorporated in the United Kingdom); and
- (b) the value of the assets taken over exceeds £70 million;

Now, therefore, the Secretary of State, in exercise of his powers under sections 64 and 69(2) of the Act, hereby refers to the Commission for investigation and report within a period ending on 9 July 1999 the following questions:

- (i) whether a merger situation qualifying for investigation has been created as a result of the matter described in paragraph (a) above; and
- (ii) if so, whether the creation of that situation operates, or may be expected to operate, against the public interest.

In relation to the question in paragraph (i) above, the Commission shall exclude from consideration one of paragraphs (a) and (b) of section 64(1) of the Act if they find the other satisfied.

9 April 1999

(signed) ANN EGGINGTON
*An official of the Department
of Trade and Industry*

2. The composition of the group of Commission members responsible for the present investigation and report is indicated among the list of members in the preface.