SCHEDULES

SCHEDULE 20

Section 153.

AMENDMENTS ABOUT MERGERS AND RELATED MATTERS

Fair Trading Act 1973 (c. 41)

1 In section 46 of the Fair Trading Act 1973, subsection (3) is omitted.

2 (1) In section 60 of that Act—

(a) in subsection (1) for "the period of three months beginning with the date of the" there is substituted "such period (not being longer than three months beginning with the date of the reference) as may be specified in the",

(b) in subsection (2) for "original period of three months" there is substituted "period specified in the newspaper merger reference", and

(c) in subsection (3) for "subsection (1)" there is substituted "the newspaper merger reference".

(2) This paragraph does not apply in relation to any newspaper merger reference made before the passing of this Act.

3 In section 63(1) of that Act, for "to 75 of this Act shall have effect in relation to merger references other than" there is substituted "to 75K of this Act shall not have effect in relation to".

4 In section 66 of that Act—

(a) in subsections (1) and (3), after "the Secretary of State" there is inserted "or the Commission", and

(b) in subsection (4), after "this section" there is inserted "and to section 66A of this Act".

5 (1) In section 67 of that Act, in subsection (2)(a), for the words from "any enterprise" to the end there is substituted—

"(i) any enterprise which remains under the same ownership and control, or

(ii) if none of the enterprises remains under the same ownership and control, the enterprise having the assets with the highest value, and".

(2) In subsection (4) of that section—

(a) after "section 66" there is inserted "or subsection (1) of section 66A", and

(b) for "that subsection" there is substituted "either of those subsections".

6 In section 68(4) of that Act, after "the Secretary of State" there is inserted "or, as the case may be, the Commission".

7 In section 71 of that Act—

(a) in subsection (1) the words "made under section 69(4) of this Act", and

(b) subsection (2),

are omitted.

8 In section 74(1) of that Act—

(a) the words "and does not impose on the Commission a limitation under section 69(4) of this Act" are omitted, and

(b) in paragraph (d), for "paragraph 12" there is substituted "paragraphs 12 and 12A".

9 In section 75(4) of that Act—

(a) after "sections 66" there is inserted "66A", and

(b) for paragraphs (a) and (b) there is substituted—

"(a) section 66 shall apply, where an event by which any enterprises cease as between themselves to be distinct enterprises will occur if the arrangements are carried into effect, as if the event had occurred immediately before the date of the reference;

(aa) section 66A shall apply, where a transaction falling within subsection (2) of that section will occur if the arrangements are carried into effect, as if the transaction had occurred immediately before the date of the reference;

(b) in section 67(4) the references to subsection (1) of section 66 and subsection (1) of section 66A shall be construed as references to those subsections as modified in accordance with paragraph (a) or (aa) of this subsection;".

10 Paragraphs 4 to 9 (and the repeals in Schedule 24 corresponding to paragraphs 7 and 8(a)) do not apply in relation to any merger reference made before the passing of this Act.

11 At the end of section 76 of that Act there is added—

"(2) In exercising his duty under this section the Director shall take into consideration any representations made to him by persons appearing to him to have a substantial interest in any such arrangements or transactions or by bodies appearing to him to represent substantial numbers of persons who have such an interest.".

12 (1) In section 83 of that Act, after subsection (3) there is inserted—

"(3A) Without prejudice to subsection (3) above, if the Minister or Ministers to whom any such report is made consider that it would not be in the public interest to disclose—

(a) any matter contained in the report relating to the private affairs of an individual whose interests would, in the opinion of the Minister or Ministers, be seriously and prejudicially affected by the publication of that matter, or

(b) any matter contained in the report relating specifically to the affairs of a particular person whose interests would, in the opinion of the Minister or Ministers, be seriously and prejudicially affected by the publication of that matter,

the Minister or Ministers shall exclude that matter from the copies of the report as laid before Parliament and from the report as published under this section.".

(2) This paragraph does not apply in relation to any report made before the passing of this Act.

13 (1) In section 85 of that Act, for subsection (7) there is substituted—

"(7) If any person (referred to in subsection (7A) of this section as "the defaulter") refuses or otherwise fails to comply with any notice under subsection (1) of this section, any one of those who, in relation to the investigation in question, are performing the functions of the Commission may certify that fact in writing to the court and the court may enquire into the case.

(7A) If, after hearing any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence, the court is satisfied that the defaulter did without reasonable excuse refuse or otherwise fail to comply with the notice, the court may punish the defaulter (and, in the case of a body corporate, any director or officer) in like manner as if the defaulter had been guilty of contempt of court.".

(2) Subsections (5) and (6)(b) of that section are omitted.

14 (1) In section 88 of that Act, in subsection (1) for the words from "if requested" to "the relevant parties" there is substituted "to comply with any request of the appropriate Minister or Ministers to consult with any persons mentioned in the request (referred to below in this section as "the relevant parties")".

(2) After subsection (2) of that section there is inserted—

"(2A) Where—

(a) an undertaking is given under this section after the commencement of this subsection, or

(b) an undertaking given under this section is varied or released after that time,

the Minister to whom the undertaking is or was given shall cause the undertaking or, as the case may be, the variation or release to be published in such manner as the Minister may consider appropriate.".

(3) In subsection (4) of that section—

(a) in paragraph (a) for "it" there is substituted "the undertaking is no longer appropriate and either the relevant parties (or any of them) can be released from the undertaking or the undertaking", and

(b) in paragraph (b) for "that it" there is substituted "that any person can be so released or that an undertaking",

and in subsection (5), after "varied" (in both places) there is inserted "or revoked".

(4) In subsection (6) of that section the words from "`the relevant parties'" to the "and" immediately following paragraph (c) are omitted.

(5) Sub-paragraphs (1) and (4) (and the repeal in Schedule 24 corresponding to sub-paragraph (4)) do not apply in relation to any report made before the passing of this Act.

15 (1) In section 89 of that Act, in subsection (1), for paragraphs (a) and (b) there is substituted—

"(a) in the circumstances specified in subsection (1) of any of the following sections—

(i) sections 56, 73 and 75K of this Act, and

(ii) section 10 of the Competition Act 1980,

the Secretary of State makes, has made, or has under consideration the making of, an order under the section in question exercising any of the powers specified in Schedule 8 to this Act, or

(b) in the circumstances specified in subsection (1) of section 12 of the Competition Act 1980 the Secretary of State makes, has made, or has under consideration the making of, an order under subsection (5) of that section exercising any of those powers.".

(2) In subsection (2) of that section, "Part II of" is omitted.

(3) In subsection (3) of that section, after paragraph (b) there is inserted—

"(bb) require any person to furnish any such information to the Director as may be specified or described in the order;".

(4) The amendments made by sub-paragraphs (1) to (3) have effect in relation to the making of any order under section 89 of the Fair Trading Act 1973 after the passing of this Act, whether the principal order (within the meaning of that section) was made before or after that time.

16 (1) Section 90 of that Act is amended as follows.

(2) In subsection (1) after "section 74" there is inserted ", section 75K".

(3) For subsection (5) there is substituted—

"(5) Nothing in any order to which this section applies shall have effect so as to—

(a) cancel or modify conditions in licences granted—

(i) under a patent granted under the Patents Act 1949 or the Patents Act 1977 or a European patent (UK) (within the meaning of the Patents Act 1977), or

(ii) in respect of a design registered under the Registered Designs Act 1949,

by the proprietor of the patent or design, or

(b) require an entry to be made in the register of patents or the register of designs to the effect that licences under such a patent or such a design are to be available as of right.".

17 In section 132(1) of that Act, after "85(6)" there is inserted "section 93B".

18 (1) In Schedule 3 to that Act, in paragraph 16(2) for "75" there is substituted "73".

(2) This paragraph does not apply in relation to any report made before the passing of this Act.

19 (1) Schedule 8 to that Act is amended as follows.

(2) After paragraph 9 there is inserted—

"9A (1) An order may require a person supplying goods or services to publish—

(a) any such accounting information in relation to the supply of the goods or services, and

(b) any such information in relation to—

(i) the quantities of goods or services supplied, or

(ii) the geographical areas in which they are supplied,

as may be specified or described in the order.

(2) In this paragraph "accounting information", in relation to a supply of goods or services, means information as to—

(a) the costs of the supply, including fixed costs and overheads,

(b) the manner in which fixed costs and overheads are calculated and apportioned for accounting purposes of the supplier, and

(c) the income attributable to the supply.".

(3) After paragraph 12 there is inserted—

"12A An order may require any person to furnish any such information to the Director as may be specified or described in the order.

12B An order may require any activities to be carried on separately from any other activities.

12C An order may prohibit or restrict the exercise of any right to vote exercisable by virtue of the holding of any shares, stock or securities.".

20 (1) In Schedule 9 to that Act, in paragraph 4 the words from "either" to the end are omitted.

(2) This paragraph has effect in relation to the laying of any draft order under paragraph 4 of Schedule 9 to the Fair Trading Act 1973 after the passing of this Act, whether the notice under that Schedule was published before or after that time.

Competition Act 1980 (c. 21)

21 In section 3(8) of the Competition Act 1980—

(a) for "(5)" there is substituted "(6)", and

(b) at the end there is inserted "but as if, in subsection (7) of that section, for the words from "any one" to "the Commission" there were substituted "the Director"".

22 In section 4(4) of that Act for paragraph (a) there is substituted—

"(a) to arrange for—

(i) any undertaking accepted by him under this section, and

(ii) any variation or release of such an undertaking after the passing of the Companies Act 1989,

to be published in such manner as appears to him to be appropriate,".

23 In section 9(4) of that Act—

(a) in paragraph (a), after "undertaking" there is inserted "and of any variation of it after the passing of the Companies Act 1989", and

(b) in paragraph (b), after "undertaking" there is inserted "and any variation or release of it after that time".

24 In section 29(1)(a) of that Act after "section" there is inserted "75G or".

Telecommunications Act 1984 (c. 12)

25 (1) In section 13(9) of the Telecommunications Act 1984, after "Commission)" there is inserted "together with section 24 of the Competition Act 1980 (modification of provisions about performance of Commission's functions)".

(2) The Monopolies and Mergers Commission (Performance of Functions) Order 1989 shall have effect as if sub-paragraph (1) above had come into force immediately before the making of the Order.

Financial Services Act 1986 (c. 60)

26 In section 123(3) of the Financial Services Act 1986—

(a) for "(5)" there is substituted "(6)", and

(b) at the end there is inserted "but as if, in subsection (7) of that section, for the words from "any one" to "the Commission" there were substituted "the Director"".