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SCHEDULES

SCHEDULE 1

Sections 3(1)(a) and 19(1)(a).

EXCLUSIONS: MERGERS AND CONCENTRATIONS

PART I

MERGERS

Enterprises ceasing to be distinct: the Chapter I prohibition

- 1 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) results, or if carried out would result, in any two enterprises ceasing to be distinct enterprises for the purposes of [^{F1}Part 3 of the Enterprise Act 2002 (“the 2002 Act”)], the Chapter I prohibition does not apply to the agreement.
- (2) The exclusion provided by sub-paragraph (1) extends to any provision directly related and necessary to the implementation of the merger provisions.
- (3) In sub-paragraph (2) “merger provisions” means the provisions of the agreement which cause, or if carried out would cause, the agreement to have the result mentioned in sub-paragraph (1).
- (4) [^{F2}Section 26 of the 2002 Act] applies for the purposes of this paragraph as if—
- (a) in subsection (3) (circumstances in which a person or group of persons may be treated as having control of an enterprise), and
 - (b) in subsection (4) (circumstances in which a person or group of persons may be treated as bringing an enterprise under their control),
- for “may” there were substituted “must”.

Textual Amendments

- F1** Words in Sch. 1 para. 1(1) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(50)(a)(i); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F2** Words in Sch. 1 para. 1(4) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, Sch. 25 para. 38(50)(a)(ii); S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

Enterprises ceasing to be distinct: the Chapter II prohibition

- 2 (1) To the extent to which conduct (either on its own or when taken together with other conduct)—
- (a) results in any two enterprises ceasing to be distinct enterprises for the purposes of [^{F3}Part 3 of the 2002 Act]), or

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(b) is directly related and necessary to the attainment of the result mentioned in paragraph (a),
 the Chapter II prohibition does not apply to that conduct.

(2) [F4Section 26 of the 2002 Act] applies for the purposes of this paragraph as it applies for the purposes of paragraph 1.

Textual Amendments

- F3** Words in Sch. 1 para. 2(1)(a) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(50)(b)(i)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)
- F4** Words in Sch. 1 para. 2(2) substituted (20.6.2003 for specified purposes, 29.12.2004 in so far as not already in force) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(50)(b)(ii)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(1), 8); S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

Transfer of a newspaper or of newspaper assets

F53

Textual Amendments

- F5** Sch. 1 para. 3 repealed (29.12.2003) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/3142, art. 3(1), Sch. 1 (with art. 11)

Withdrawal of the paragraph 1 exclusion

- 4 (1) The exclusion provided by paragraph 1 does not apply to a particular agreement if the [F6OFT] gives a direction under this paragraph to that effect.
- (2) If the [F6OFT] is considering whether to give a direction under this paragraph, [F7it] may by notice in writing require any party to the agreement in question to give [F7the OFT] such information in connection with the agreement as [F7it] may require.
- (3) The [F6OFT] may give a direction under this paragraph only as provided in sub-paragraph (4) or (5).
- (4) If at the end of such period as may be specified in rules under section 51 a person has failed, without reasonable excuse, to comply with a requirement imposed under sub-paragraph (2), the [F6OFT] may give a direction under this paragraph.
- (5) The [F6OFT] may also give a direction under this paragraph if—
- [F8(a) it considers that the agreement will, if not excluded, infringe the Chapter I prohibition; and]
- (b) the agreement is not a protected agreement.
- (6) [F9For the purposes of sub-paragraph (5), an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).]
- (7) A direction under this paragraph—
- (a) must be in writing;

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- (b) may be made so as to have effect from a date specified in the direction (which may not be earlier than the date on which it is given).

Textual Amendments

- F6** Word in Sch. 1 para. 4 substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(50)(c)(i)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F7** Words in Sch. 1 para. 4(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(50)(c)(ii)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F8** Sch. 1 para. 4(5)(a) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 48(2)(a)**
- F9** Sch. 1 para. 4(6) ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 1 para. 48(2)(b)** (with reg. 6(2))

Modifications etc. (not altering text)

- C1** Sch. 1 para. 4 applied (1.3.2000) by S.I. 2000/310, **art. 7**

Protected agreements

- 5 An agreement is a protected agreement for the purposes of paragraph 4 if—
- ^{F10}(a) the OFT or (as the case may be) the Secretary of State has published its or his decision not to make a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement;
- (b) the OFT or (as the case may be) the Secretary of State has made a reference to the Competition Commission under section 22, 33, 45 or 62 of the 2002 Act in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a relevant merger situation or (as the case may be) a special merger situation;
- (c) the agreement does not fall within paragraph (a) or (b) but has given rise to, or would if carried out give rise to, enterprises to which it relates being regarded under section 26 of the 2002 Act as ceasing to be distinct enterprises (otherwise than as the result of subsection (3) or (4)(b) of that section); or
- (d) the OFT has made a reference to the Competition Commission under section 32 of the Water Industry Act 1991 in connection with the agreement and the Commission has found that the agreement has given rise to, or would if carried out give rise to, a merger of any two or more water enterprises of the kind to which that section applies.]

Textual Amendments

- F10** Sch. 1 para. 5(a)(d) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 38(50)(d)**; S.I. 2003/1397, art. 2(1), Sch. (with arts. 3(4)8)

Modifications etc. (not altering text)

- C2** Sch. 1 para. 5(a)(b) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 15(1)(a)**
- C3** Sch. 1 para. 5(b) amended (20.6.2003) by The Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003 (S.I. 2003/1592), art. 1(1), **Sch. 4 para. 15(1)(b)**

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- C4** Sch. 1 para. 5 modified (temp.) (7.12.2004) by [The Enterprise Act 2002 \(Commencement No. 7 and Transitional Provisions and Savings\) Order 2004 \(S.I. 2004/3233\)](#), **art. 5(2)(b)**

PART II

CONCENTRATIONS SUBJECT TO EC CONTROLS

- 6 (1) To the extent to which an agreement (either on its own or when taken together with another agreement) gives rise to, or would if carried out give rise to, a concentration, the Chapter I prohibition does not apply to the agreement if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (2) To the extent to which conduct (either on its own or when taken together with other conduct) gives rise to, or would if pursued give rise to, a concentration, the Chapter II prohibition does not apply to the conduct if the Merger Regulation gives the Commission exclusive jurisdiction in the matter.
- (3) In this paragraph—
 “concentration” means a concentration with a Community dimension within the meaning of Articles 1 and 3 of the Merger Regulation; and
 ^[F11]“Merger Regulation” means Council Regulation (EC) No 139/2004 of 20th January 2004 on the control of concentrations between undertakings.]

Textual Amendments

- F11** Words in [Sch. 1 para. 6\(3\)](#) substituted (1.5.2004) by [The EC Merger Control \(Consequential Amendments\) Regulations 2004 \(S.I. 2004/1079\)](#), reg. 1, **Sch. para. 1(2)**

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