

## SCHEDULES

### SCHEDULE 3

Sections 3(1)(c) and 19(1)(b).

#### GENERAL EXCLUSIONS

##### *Planning obligations*

- 1 (1) The Chapter I prohibition does not apply to an agreement—
- (a) to the extent to which it is a planning obligation;
  - (b) which is made under section 75 (agreements regulating development or use of land) or 246 (agreements relating to Crown land) of the Town and Country Planning (Scotland) Act 1997; or
  - (c) which is made under Article 40 of the Planning (Northern Ireland) Order 1991.
- (2) In sub-paragraph (1)(a), “planning obligation” means—
- (a) a planning obligation for the purposes of section 106 of the Town and Country Planning Act 1990; or
  - (b) a planning obligation for the purposes of section 299A of that Act.

##### *Section 21(2) agreements*

- 2 (1) The Chapter I prohibition does not apply to an agreement in respect of which a direction under section 21(2) of the Restrictive Trade Practices Act 1976 is in force immediately before the coming into force of section 2 (“a section 21(2) agreement”).
- (2) If a material variation is made to a section 21(2) agreement, sub-paragraph (1) ceases to apply to the agreement on the coming into force of the variation.
- (3) Sub-paragraph (1) does not apply to a particular section 21(2) agreement if the Director gives a direction under this paragraph to that effect.
- (4) If the Director is considering whether to give a direction under this paragraph, he may by notice in writing require any party to the agreement in question to give him such information in connection with the agreement as he may require.
- (5) The Director may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) 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 (4), the Director may give a direction under this paragraph.
- (7) The Director may also give a direction under this paragraph if he considers—
- (a) that the agreement will, if not excluded, infringe the Chapter I prohibition; and
  - (b) that he is not likely to grant it an unconditional individual exemption.

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- (8) For the purposes of sub-paragraph (7) an individual exemption is unconditional if no conditions or obligations are imposed in respect of it under section 4(3)(a).
- (9) A direction under this paragraph—
  - (a) must be in writing;
  - (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).

#### *EEA Regulated Markets*

- 3 (1) The Chapter I prohibition does not apply to an agreement for the constitution of an EEA regulated market to the extent to which the agreement relates to any of the rules made, or guidance issued, by that market.
- (2) The Chapter I prohibition does not apply to a decision made by an EEA regulated market, to the extent to which the decision relates to any of the market's regulating provisions.
- (3) The Chapter I prohibition does not apply to—
  - (a) any practices of an EEA regulated market; or
  - (b) any practices which are trading practices in relation to an EEA regulated market.
- (4) The Chapter I prohibition does not apply to an agreement the parties to which are or include—
  - (a) an EEA regulated market, or
  - (b) a person who is subject to the rules of that market,
 to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by the regulating provisions of that market.
- (5) In this paragraph—
  - “EEA regulated market” is a market which—
    - (a) is listed by an EEA State other than the United Kingdom pursuant to article 16 of Council Directive No.93/22/EEC of 10th May 1993 on investment services in the securities field; and
    - (b) operates without any requirement that a person dealing on the market should have a physical presence in the EEA State from which any trading facilities are provided or on any trading floor that the market may have;
  - “EEA State” means a State which is a contracting party to the EEA Agreement;
  - “regulating provisions”, in relation to an EEA regulated market, means—
    - (a) rules made, or guidance issued, by that market,
    - (b) practices of that market, or
    - (c) practices which, in relation to that market, are trading practices;
  - “trading practices”, in relation to an EEA regulated market, means practices of persons who are subject to the rules made by that market, and—
    - (a) which relate to business in respect of which those persons are subject to the rules of that market, and which are required or contemplated by those rules or by guidance issued by that market; or
    - (b) which are otherwise attributable to the conduct of that market as such.

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*Services of general economic interest etc.*

- 4 Neither the Chapter I prohibition nor the Chapter II prohibition applies to an undertaking entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly in so far as the prohibition would obstruct the performance, in law or in fact, of the particular tasks assigned to that undertaking.

*Compliance with legal requirements*

- 5 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it is made in order to comply with a legal requirement.
- (2) The Chapter II prohibition does not apply to conduct to the extent to which it is engaged in an order to comply with a legal requirement.
- (3) In this paragraph “legal requirement” means a requirement—
- (a) imposed by or under any enactment in force in the United Kingdom;
  - (b) imposed by or under the Treaty or the EEA Agreement and having legal effect in the United Kingdom without further enactment; or
  - (c) imposed by or under the law in force in another Member State and having legal effect in the United Kingdom.

*Avoidance of conflict with international obligations*

- 6 (1) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter I prohibition not to apply to—
- (a) a particular agreement, or
  - (b) any agreement of a particular description,
- he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that, in order to avoid a conflict between provisions of this Part and an international obligation of the United Kingdom, it would be appropriate for the Chapter II prohibition not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.
- (6) An international arrangement relating to civil aviation and designated by an order made by the Secretary of State is to be treated as an international obligation for the purposes of this paragraph.
- (7) In this paragraph and paragraph 7 “specified” means specified in the order.

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*Public policy*

- 7 (1) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter I prohibition ought not to apply to—
- (a) a particular agreement, or
  - (b) any agreement of a particular description,
- he may by order exclude the agreement, or agreements of that description, from the Chapter I prohibition.
- (2) An order under sub-paragraph (1) may make provision for the exclusion of the agreement or agreements to which the order applies, or of such of them as may be specified, only in specified circumstances.
- (3) An order under sub-paragraph (1) may also provide that the Chapter I prohibition is to be deemed never to have applied in relation to the agreement or agreements, or in relation to such of them as may be specified.
- (4) If the Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the Chapter II prohibition ought not to apply in particular circumstances, he may by order provide for it not to apply in such circumstances as may be specified.
- (5) An order under sub-paragraph (4) may provide that the Chapter II prohibition is to be deemed never to have applied in relation to specified conduct.

*Coal and steel*

- 8 (1) The Chapter I prohibition does not apply to an agreement which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (2) Sub-paragraph (1) ceases to have effect on the date on which the ECSC Treaty expires (“the expiry date”).
- (3) The Chapter II prohibition does not apply to conduct which relates to a coal or steel product to the extent to which the ECSC Treaty gives the Commission exclusive jurisdiction in the matter.
- (4) Sub-paragraph (3) ceases to have effect on the expiry date.
- (5) In this paragraph—
- “coal or steel product” means any product of a kind listed in Annex I to the ECSC Treaty; and
- “ECSC Treaty” means the Treaty establishing the European Coal and Steel Community.

*Agricultural products*

- 9 (1) The Chapter I prohibition does not apply to an agreement to the extent to which it relates to production of or trade in an agricultural product and—
- (a) forms an integral part of a national market organisation;
  - (b) is necessary for the attainment of the objectives set out in Article 39 of the Treaty; or
  - (c) is an agreement of farmers or farmers' associations (or associations of such associations) belonging to a single member State which concerns—

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- (i) the production or sale of agricultural products, or
  - (ii) the use of joint facilities for the storage, treatment or processing of agricultural products,and under which there is no obligation to charge identical prices.
- (2) If the Commission determines that an agreement does not fulfil the conditions specified by the provision for agricultural products for exclusion from Article 85(1), the exclusion provided by this paragraph (“the agriculture exclusion”) is to be treated as ceasing to apply to the agreement on the date of the decision.
- (3) The agriculture exclusion does not apply to a particular agreement if the Director gives a direction under this paragraph to that effect.
- (4) If the Director is considering whether to give a direction under this paragraph, he may by notice in writing require any party to the agreement in question to give him such information in connection with the agreement as he may require.
- (5) The Director may give a direction under this paragraph only as provided in sub-paragraph (6) or (7).
- (6) 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 (4), the Director may give a direction under this paragraph.
- (7) The Director may also give a direction under this paragraph if he considers that an agreement (whether or not he considers that it infringes the Chapter I prohibition) is likely, or is intended, substantially and unjustifiably to prevent, restrict or distort competition in relation to an agricultural product.
- (8) A direction under this paragraph—
  - (a) must be in writing;
  - (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).
- (9) In this paragraph—
  - “agricultural product” means any product of a kind listed in Annex II to the Treaty; and
  - “provision for agricultural products” means Council Regulation (EEC) No. 26/62 of 4th April 1962 applying certain rules of competition to production of and trade in agricultural products.