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*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 4. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 4

Section 25(4)

#### THE COMPETITION AND MARKETS AUTHORITY

##### PART 1

##### GENERAL

##### *Membership*

- 1 (1) The CMA is to consist of—
- (a) a person appointed by the Secretary of State to chair the CMA and the CMA Board (the “chair”), and
  - (b) other persons appointed by the Secretary of State to membership of—
    - (i) the CMA Board (see Part 2);
    - (ii) the CMA panel (see Part 3);
    - (iii) both the CMA Board and the CMA panel.
- (2) The Secretary of State must consult the chair before making an appointment under sub-paragraph (1)(b).
- (3) At least five of the members appointed under sub-paragraph (1)(b) must be appointed to membership of the CMA Board.
- (4) At least one of the members appointed under sub-paragraph (1)(b) must be appointed to membership of the CMA Board and to membership of the CMA panel.
- (5) Of the persons appointed to membership of the CMA Board under sub-paragraph (1)(b), no more than half may be members of staff of the CMA.
- (6) In this Schedule, references to members of the CMA are to persons appointed under sub-paragraph (1).
- (7) A person holding office as a member of the Competition Appeal Tribunal is ineligible for appointment under this paragraph.

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##### **Commencement Information**

**II** Sch. 4 para. 1 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

##### *Terms and conditions*

- 2 (1) The members of the CMA are to hold and vacate office in accordance with the terms and conditions of their appointments.

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(2) Those terms and conditions are to be determined by the Secretary of State.

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**Commencement Information**

**I2** Sch. 4 para. 2 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Term of appointment*

- 3 (1) Appointment to membership of the CMA Board under paragraph 1(1)(b) is to be for a term of not more than five years.
- (2) Appointment to membership of the CMA panel under paragraph 1(1)(b) is to be for a term of not more than eight years.
- (3) Appointment as the chair is to be for a term of not more than five years.

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**Commencement Information**

**I3** Sch. 4 para. 3 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Re-appointment*

- 4 (1) A person who has been appointed to membership of the CMA panel may be re-appointed to membership of the CMA panel only for the purpose of continuing to act as a member of a group constituted under paragraph 36 before the expiry of his or her term of office.
- (2) Subject to sub-paragraph (1), a person's previous appointment under paragraph 1 does not affect eligibility for a subsequent appointment under that paragraph.

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**Commencement Information**

**I4** Sch. 4 para. 4 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Remuneration etc of members*

- 5 (1) The CMA must pay to its members such remuneration, allowances and expenses as the Secretary of State may determine.
- (2) The CMA must pay or make provision for the payment of such pension, allowances or gratuities as the Secretary of State may determine to or in respect of a current or former member.
- (3) If a person ceases to hold an office to which he or she has been appointed under paragraph 1, and the Secretary of State decides that there are special circumstances which mean that the person should be compensated, the CMA must pay compensation to the person of such amount as the Secretary of State may determine.

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**Commencement Information**

**I5** Sch. 4 para. 5 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Resignation*

- 6 (1) The chair may at any time resign from membership of the CMA by giving written notice to this effect to the Secretary of State.
- (2) A person who is a member of either the CMA Board or the CMA panel (but not of both) may at any time resign from membership of the CMA by giving written notice to this effect to the Secretary of State.
- (3) A person who is a member of both the CMA Board and the CMA panel may at any time, by giving written notice to this effect to the Secretary of State—
- (a) resign from membership of either the CMA Board or the CMA panel, or
  - (b) resign from membership of the CMA.

**Commencement Information**

**I6** Sch. 4 para. 6 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Termination of membership*

- 7 The Secretary of State may at any time remove a person from office as a member of the CMA on any of the following grounds—
- (a) incapacity;
  - (b) misbehaviour;
  - (c) failure to carry out his or her duties.

**Commencement Information**

**I7** Sch. 4 para. 7 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Status*

- 8 The CMA is to perform its functions on behalf of the Crown.

**Commencement Information**

**I8** Sch. 4 para. 8 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Chief executive and other staff*

- 9 (1) The CMA is to have a chief executive appointed by the Secretary of State (the “chief executive”).
- (2) The chief executive may also be a member of the CMA, but must not be—
- (a) the chair, or

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- (b) a member of the CMA panel.
- (3) Before appointing the chief executive, the Secretary of State must consult the chair.
- (4) The appointment—
  - (a) is to be for a term of not more than five years;
  - (b) subject to that, is to be on such terms and conditions as the Secretary of State considers fit.
- (5) The chief executive holds that office as a member of the staff of the CMA.
- (6) A previous appointment as chief executive does not affect a person's eligibility for re-appointment.

**Commencement Information**

**I9** Sch. 4 para. 9 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 10
- (1) The CMA may appoint other members of staff.
  - (2) A person appointed as a member of the CMA's staff under sub-paragraph (1) may also be a member of the CMA, but must not be—
    - (a) the chair, or
    - (b) a member of the CMA panel.
  - (3) The following are to be determined by the CMA with the approval of the Minister for the Civil Service—
    - (a) the number of members of staff appointed under sub-paragraph (1);
    - (b) their conditions of service.

**Commencement Information**

**I10** Sch. 4 para. 10 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 11
- A person holding office as a member of the Competition Appeal Tribunal is ineligible for appointment under paragraph 9 or 10.

**Commencement Information**

**I11** Sch. 4 para. 11 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Annual plan*

- 12
- (1) The CMA must prepare an annual plan for each financial year.
  - (2) The plan must—
    - (a) set out the CMA's main objectives for the year and indicate the relative priorities of each of those objectives;
    - (b) provide a summary of the proposed allocation of the CMA's financial resources to the activities to be carried on in connection with those objectives.

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- (3) The CMA must arrange for the plan to be laid before Parliament.
- (4) The CMA must publish the plan, in whatever way it considers appropriate, before the start of the financial year in question.

**Commencement Information**

**I12** Sch. 4 para. 12 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 13 (1) Before finalising an annual plan, the CMA must draw up proposals for it.
- (2) The CMA must arrange for the proposals to be laid before Parliament.
- (3) The CMA must—
  - (a) publish the proposals in whatever way it considers appropriate, and
  - (b) make arrangements to consult with the public about them.
- (4) Arrangements made under sub-paragraph (3)(b) may provide for consultation with the public to be effected in whatever way the CMA considers appropriate.

**Commencement Information**

**I13** Sch. 4 para. 13 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Performance report*

- 14 (1) As soon as practicable after the end of each financial year, the CMA must prepare and send to the Secretary of State an annual report on its activities and performance during the year.
- (2) The report must include—
  - (a) a survey of developments, during the year, in matters relating to the CMA's functions;
  - (b) an assessment of the extent to which the CMA's objectives for the year, as set out in the plan published under paragraph 12, have been met;
  - (c) a summary of the significant decisions, investigations or other activities made or carried out by the CMA during the year;
  - (d) a summary of the allocation of the CMA's financial resources to its various activities during the year;
  - (e) an assessment of the CMA's performance and practices, during the year, in relation to its enforcement functions.
- (3) The CMA must—
  - (a) arrange for the report to be laid before Parliament;
  - (b) publish the report in whatever way it considers appropriate.

**Commencement Information**

**I14** Sch. 4 para. 14 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 15 The CMA may—

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- (a) prepare other reports about matters relating to any of its functions;
- (b) publish a report prepared under this paragraph.

#### Commencement Information

**I15** Sch. 4 para. 15 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

#### *Concurrency report*

- 16 (1) As soon as practicable after the end of each financial year, the CMA must prepare a report containing an assessment of how the concurrency arrangements have operated during the year.
- (2) The concurrency arrangements are the arrangements for co-operation between the CMA and the sectoral regulators in respect of functions which are exercisable concurrently by the CMA and one or more of the regulators under Part 1 of the Competition Act 1998 (the “1998 Act”) and Part 4 of the Enterprise Act 2002 (the “2002 Act”).
- (3) The report must, in particular, include information about—
- (a) the exercise during the year by the CMA of its functions under Part 1 of the 1998 Act or Part 4 of the 2002 Act in cases in which the functions are or were exercisable concurrently by one or more sectoral regulators,
  - (b) the exercise during the year by each sectoral regulator of its functions under Part 1 of the 1998 Act or Part 4 of the 2002 Act, and
  - (c) any decision made during the year by a sectoral regulator, in respect of a case in relation to which the regulator considers that its functions under Part 1 of the 1998 Act were exercisable, that it was more appropriate for it to proceed by exercising functions other than those it has under that Part of that Act.
- (4) The CMA is not required to include information in a report under this paragraph if it considers that doing so would, or would be likely to, prejudice the exercise of any of the functions of the CMA or a sectoral regulator.
- (5) In preparing a report under this paragraph, the CMA must consult each sectoral regulator.
- (6) The CMA must publish a report prepared under this paragraph in whatever way it considers appropriate.
- (7) Each of the following is a sectoral regulator—
- (a) the Office of Communications;
  - (b) the Gas and Electricity Markets Authority;
  - (c) the Water Services Regulation Authority;
  - (d) the Office of Rail Regulation;
  - (e) the Northern Ireland Authority for Utility Regulation;
  - (f) the Civil Aviation Authority;
  - (g) Monitor.

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#### Commencement Information

**I16** Sch. 4 para. 16 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

#### Documents

- 17 (1) The application of the CMA's seal must be authenticated by the signature of—
- (a) a person who is a member of the CMA Board, or
  - (b) a person authorised (generally or specifically) for that purpose by the CMA.
- (2) A document purporting to be duly executed under the CMA's seal or signed on its behalf—
- (a) is to be received in evidence;
  - (b) is to be taken to be duly signed or sealed unless the contrary is shown.
- (3) But this paragraph does not apply in relation to a document which is, or is to be, signed in accordance with the law of Scotland.

#### Commencement Information

**I17** Sch. 4 para. 17 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

#### Membership of committees and sub-committees

- 18 (1) The members of a committee or sub-committee of the CMA may include persons who are not members of the CMA.
- (2) A sub-committee may include persons who are not members of the committee that established it.

#### Commencement Information

**I18** Sch. 4 para. 18 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

#### Additional powers

VALID FROM 01/04/2014

- 19 The CMA may—
- (a) if so requested by the Secretary of State, represent the government of the United Kingdom in matters relating to international relations in any field connected to its functions, and
  - (b) promote good practice outside the United Kingdom in the carrying on of activities which may affect the economic interests of consumers in the United Kingdom.
- 20 (1) The CMA may do anything that is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

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(2) The power in sub-paragraph (1) is subject to any restrictions imposed by or under any enactment.

**Commencement Information**

**I19** Sch. 4 para. 20 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Public records*

21 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3, at the appropriate place insert— “ Competition and Markets Authority. ”

**Commencement Information**

**I20** Sch. 4 para. 21 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Parliamentary Commissioner*

22 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) at the appropriate place insert— “ Competition and Markets Authority. ”

**Commencement Information**

**I21** Sch. 4 para. 22 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Disqualification*

23 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) at the appropriate place insert— “ The Competition and Markets Authority. ”

**Commencement Information**

**I22** Sch. 4 para. 23 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

24 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert— “ The Competition and Markets Authority. ”

**Commencement Information**

**I23** Sch. 4 para. 24 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)



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### *Freedom of information*

- 25 In Part 1 of Schedule 1 to the Freedom of Information Act 2000 (definition of public authority: general)—
- (a) in paragraph 1 after “other than” insert “—
    - (a) the Competition and Markets Authority,
    - (b)”;
  - (b) after paragraph 1 insert—

“1ZA The Competition and Markets Authority, in respect of information held otherwise than as a tribunal.”

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#### **Commencement Information**

**I24** Sch. 4 para. 25 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

### *Equality*

- 26 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities: general), under the heading “*Industry, business, finance etc*” at the appropriate place insert— “The Competition and Markets Authority.”

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#### **Commencement Information**

**I25** Sch. 4 para. 26 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

## **PART 2**

### **THE CMA BOARD**

#### *Membership*

- 27 The CMA Board is to consist of—
- (a) the chair;
  - (b) the members appointed under paragraph 1(1)(b) to membership of the CMA Board.

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#### **Commencement Information**

**I26** Sch. 4 para. 27 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

#### *Functions*

- 28 Except where otherwise provided by or under any enactment, the functions of the CMA are exercisable by the CMA Board on behalf of the CMA.

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#### Commencement Information

**I27** Sch. 4 para. 28 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

#### Delegation

- 29 (1) Anything that the CMA Board is required or permitted to do (including conferring authorisation under this sub-paragraph) may be done by—
- (a) a member of the CMA Board, or a member of staff of the CMA, who has been authorised for that purpose by the CMA Board, whether generally or specifically;
  - (b) a committee or sub-committee of the CMA Board that has been so authorised.
- (2) Sub-paragraph (1) does not apply to the functions of deciding—
- (a) whether the duty to publish a market study notice under section 130A of the Enterprise Act 2002 applies;
  - (b) whether to propose to make, or to make, a reference under section 131 of that Act;
  - (c) for the purposes of the requirement imposed by section 131A(2)(b) of that Act, whether the CMA is proposing to make a decision as to whether to make a reference under section 131 of that Act in a way that is likely to have a substantial impact on the interests of any person;
  - (d) whether section 140A of that Act applies in respect of a particular case;
  - (e) whether to accept an undertaking under section 154 of that Act, or to vary or supersede or release an undertaking under that section;
  - (f) for the purposes of the requirement imposed by section 169(2) of that Act, whether the CMA is proposing to make a decision to make a reference under section 131 of that Act in a way that is likely to have a substantial impact on the interests of any person.
- (3) Sub-paragraph (1)(b) does not apply to a committee or sub-committee whose members include any person who is not a member of the CMA or of its staff.

#### Commencement Information

**I28** Sch. 4 para. 29(1) in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

VALID FROM 01/04/2014

- 30 Paragraph 29(1) is subject to provision in rules made under section 51 of the Competition Act 1998, by virtue of paragraph 1A of Schedule 9 to that Act, in respect of the exercise of a function of the CMA under Part 1 of that Act.

#### Proceedings

- 31 (1) The CMA Board may regulate its own proceedings.

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- (2) The CMA Board must consult the Secretary of State before making or revising rules and procedures, under sub-paragraph (1), for dealing with—
- (a) conflicts of interest, or
  - (b) quorum.

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**Commencement Information**

**I29** Sch. 4 para. 31 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Validity*

- 32 The validity of anything done by the CMA Board is not affected by—
- (a) a vacancy;
  - (b) a defective appointment.

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**Commencement Information**

**I30** Sch. 4 para. 32 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

VALID FROM 01/04/2014

*Reference of matter to the chair*

- 33
- (1) This paragraph applies where the CMA Board is to consider whether a matter should be referred to the chair for the constitution of a group under this Schedule.
  - (2) Before the CMA Board considers whether to refer the matter to the chair, the chair must determine whether a person who is a member of the CMA Board might reasonably be expected to be a member of a group constituted in connection with the matter.
  - (3) If the chair determines that a person who is a member of the CMA Board might reasonably be expected to be a member of such a group, that person is not to participate in the CMA Board's consideration of whether to refer the matter to the chair.

**PART 3**

THE CMA PANEL

*The CMA panel*

- 34 The CMA panel is a panel of persons available for selection as members of a group constituted in accordance with this Part of this Schedule.

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### Commencement Information

**I31** Sch. 4 para. 34 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

### *Membership of CMA panel*

- 35 (1) The CMA panel is to consist of—
- (a) at least one person (a “newspaper panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of a group constituted to carry out functions on behalf of the CMA with respect to a newspaper merger reference (a “newspaper merger reference group”);
  - (b) at least three persons (“specialist communications panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out functions on behalf of the CMA with respect to a specialist communications reference (a “specialist communications reference group”);
  - (c) at least six persons (“specialist utility panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out specialist utility functions on behalf of the CMA (a “specialist utility group”);
  - [<sup>F1</sup>(ca) at least one person (a “payment systems panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of a group constituted to carry out functions on behalf of the CMA with respect to an appeal made in accordance with section 79 of the Financial Services (Banking Reform) Act 2013 (a “specialist payment systems group”); ]
  - (d) at least one person (a “reporting panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of any group constituted to carry out functions on behalf of the CMA;
  - (e) any persons who are appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out functions with respect to a reference under article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1)).
- (2) A person who is appointed to the CMA panel as a member of a kind mentioned in one of paragraphs (a) to (e) of sub-paragraph (1) may also be appointed as a member of one or more of the other kinds mentioned in those paragraphs.
- (3) For the purposes of this paragraph and paragraph 38—
- a “newspaper merger reference” is—
    - (a) a reference under section 45 of the Enterprise Act 2002 that specifies a newspaper public interest consideration (within the meaning of paragraph 20A of Schedule 8 to that Act);
    - (b) a reference under section 62 of that Act that specifies a consideration specified in section 58(2A) or (2B) of that Act;
  - a “specialist communications reference” is a reference under section 193 of the Communications Act 2003;
  - “specialist utility functions” are functions with respect to—

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- (a) an appeal under section 23B, or a reference under section 41E, of the Gas Act 1986;
- (b) an appeal under section 11C, or a reference under section 56C, of the Electricity Act 1989;
- (c) a reference under section 12, 14 or 17K of the Water Industry Act 1991;
- (d) the giving of a direction or the making of modifications under section 16A or 17P of that Act;
- (e) an appeal under section 173 of the Energy Act 2004;
- (f) a reference under article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172);
- (g) the giving of a direction or the making of modifications under article 9 of that Order.

#### Textual Amendments

- F1** Sch. 4 para. 35(1)(ca) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 5 para. 2\(2\)](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

#### Commencement Information

- I32** Sch. 4 para. 35 in force at 1.10.2013 by [S.I. 2013/2227](#), [art. 2\(j\)](#) (with [art. 3](#))

VALID FROM 01/04/2014

#### *Constitution of CMA groups*

- 36 Where the chair is, by or under any enactment, required to constitute a group under this Schedule (a “CMA group”), the chair must constitute the group in accordance with this Part of this Schedule.

VALID FROM 01/04/2014

#### *Membership of CMA groups*

- 37 (1) The members of a CMA group are to be selected by the chair.
- (2) In selecting the members of a CMA group, the chair must comply with any requirements imposed by or under any enactment.
- (3) Subject to that, paragraph 38 has effect for the purposes of the membership of a CMA group.
- 38 (1) Each CMA group is to consist of at least three members of the CMA panel.
- (2) Subject to sub-paragraphs (3) to (6), those members are to be such persons as the chair may select.
- (3) In the case of a newspaper merger reference group—
- (a) the group must include at least one newspaper panel member;

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- (b) the members of the group (if any) who are not newspaper panel members must be reporting panel members.
- (4) In the case of a specialist communications reference group, the group must include at least one, but not more than three, of the specialist communications panel members.
- (5) In the case of a specialist utility group, the group must include at least one of the specialist utility panel members.
- [<sup>F2</sup>(5A) In the case of a specialist payment systems group, the group must include at least one payment systems member. ]
- (6) A newspaper panel member is not to be selected as a member of a CMA group that is not a newspaper merger reference group.
- (7) The chair may at any time appoint a reporting panel member to be an additional member of a CMA group.
- (8) The chair must appoint one of the members of a CMA group to chair the group (the “group chair”).

#### Textual Amendments

**F2** Sch. 4 para. 38(5A) inserted (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 5 para. 2\(3\)](#); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

- 39 The validity of anything done by a CMA group is not affected by—
- (a) a vacancy;
  - (b) a defective appointment.

VALID FROM 01/04/2014

#### *Termination of person's membership of a CMA group*

- 40 A member of the CMA panel may at any time resign from a CMA group by giving written notice to this effect to the chair.
- 41 (1) Sub-paragraph (2) applies if the chair considers that—
- (a) a member of a CMA group will be unable, for a substantial period, to perform his or her duties as a member of the group, or
  - (b) because of a particular interest of a member of a CMA group, it is inappropriate for him or her to remain a member of the group.
- (2) The chair may remove the person in question from membership of the group.
- 42 A person ceases to be a member of a CMA group on ceasing to be a member of the CMA panel.

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*Changes to legislation: There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 4. (See end of Document for details)*

VALID FROM 01/04/2014

*Replacement of a member of a CMA group*

- 43 (1) Sub-paragraph (2) applies if a person ceases to be a member of a CMA group, whether by being removed under paragraph 41, or otherwise.
- (2) The chair may select a replacement member of the group from the CMA panel.

VALID FROM 01/04/2014

*Continuity on removal or replacement*

- 44 (1) A person's ceasing to be a member of a CMA group, whether by being removed under paragraph 41, or otherwise, does not prevent—
- (a) the group from continuing with anything begun before the person ceased to be a member of it;
  - (b) any decision made or direction given by the person while a member of the group from having effect after he or she has ceased to be a member of the group.
- (2) Sub-paragraph (1)—
- (a) applies whether or not a replacement member of the group is selected under paragraph 43;
  - (b) does not affect any requirements imposed by or under any enactment with respect to the constitution of a CMA group.

VALID FROM 01/04/2014

*Attendance of other members*

- 45 (1) At the invitation of the group chair of a CMA group, any reporting panel member who is not a member of the group may attend its meetings or otherwise take part in its proceedings.
- (2) But a person attending in response to such an invitation may not—
- (a) vote in any proceedings of the group, or
  - (b) have a statement of his or her dissent from a conclusion of the group included in a report made by the group.
- (3) Nothing in sub-paragraph (1) is to be taken to prevent a CMA group from consulting any member of the CMA panel with respect to any matter or question with which the group is concerned.

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VALID FROM 01/04/2014

*Powers of chair pending group's constitution and first meeting*

- 46 (1) While a CMA group is being constituted, the chair may take such steps as he or she considers appropriate to facilitate the work of the group once it has been constituted.
- (2) The steps taken must be steps that it would be within the power of the group to take, had it already been constituted.
- 47 (1) The chair may, on behalf of the CMA, exercise the power conferred by section 37(1), 48(1) or 64(1) of the Enterprise Act 2002 in respect of the reference of a matter—
- (a) while a CMA group is being constituted in connection with the reference;
- (b) after a CMA group has been so constituted, but before it has held its first meeting.
- (2) Sections 34C, 46D and 62A of the Enterprise Act 2002 have effect subject to sub-paragraph (1).

VALID FROM 01/04/2014

*Performance of functions of chair with respect to constitution etc of CMA group*

- 48 (1) A function of the chair that is specified in sub-paragraph (4) may, with the consent of the CMA Board, be exercised on behalf of the chair by—
- (a) a person who is a member of both the CMA panel and the CMA Board, or
- (b) a member of the CMA panel designated by the Secretary of State (whether generally or specifically) for the purposes of this paragraph.
- (2) The consent referred to in sub-paragraph (1) must specify the identity of the person by whom a function of the chair is to be exercised.
- (3) It may be given—
- (a) by reference generally to functions specified in sub-paragraph (4);
- (b) by reference to specific functions, or functions of a particular description;
- (c) by reference generally to CMA groups;
- (d) by reference to specific matters or specific CMA groups, or by reference to matters or CMA groups of a particular description.
- (4) The functions are—
- (a) the chair's functions under paragraph 33 and under this Part of this Schedule;
- (b) the chair's functions by or under any other enactment in respect of the constitution of a CMA group;
- (c) the chair's functions under—
- (i) Schedule 4A to the Gas Act 1986;
- (ii) Schedule 5A to the Electricity Act 1989;
- (iii) Schedule 22 to the Energy Act 2004;
- (iv) Schedule 2 to the Civil Aviation Act 2012.



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[<sup>F3</sup>(v) Schedule 5 to the Financial Services (Banking Reform) Act 2013.]

**Textual Amendments**

- F3** Sch. 4 para. 48(4)(c)(v) inserted (1.3.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), s. 148(5), **Sch. 5 para. 2(4)**; S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

VALID FROM 01/04/2014

*Independence of groups*

- 49 (1) In making decisions that they are required or permitted to make by virtue of any enactment, CMA groups must act independently of the CMA Board.
- (2) Nothing in sub-paragraph (1) prevents—
- (a) the CMA Board from giving information in its possession to a CMA group, or
  - (b) a CMA group giving information in its possession to the CMA Board.

VALID FROM 01/04/2014

*Casting votes*

- 50 If a CMA group's vote on any decision is tied, the group chair is to have a casting vote.

*Requirement to make rules of procedure for certain groups*

- 51 (1) The CMA Board must make rules of procedure for merger reference groups, market reference groups, and special reference groups.
- (2) Those rules are subject to any provision made by or under any enactment in respect of the procedure of a CMA group.
- (3) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.
- (4) The CMA Board must publish rules made under this paragraph in whatever manner it considers appropriate for bringing them to the attention of those likely to be affected by them.
- (5) Subject to rules made under this paragraph, and to any provision made by or under any enactment, a CMA group of a type referred to in sub-paragraph (1) may determine its own procedure.
- (6) In this paragraph and paragraph 53—
- (a) “market reference group” means a CMA group constituted in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;

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- (b) “merger reference group” means a CMA group constituted in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45, or 62 of the Enterprise Act 2002;
- (c) “special reference group” means a CMA group constituted in connection with a reference under—
- (i) section 11 of the Competition Act 1980;
  - (ii) section 41E of the Gas Act 1986;
  - (iii) section 56C of the Electricity Act 1989;
  - (iv) section 12, 14 or 17K of the Water Industry Act 1991;
  - (v) article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));
  - (vi) section 13 of, or Schedule 4A to, the Railways Act 1993;
  - (vii) article 15 of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));
  - (viii) section 12 of the Transport Act 2000;
  - (ix) section 193 of the Communications Act 2003;
  - (x) article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172).

#### Commencement Information

**I33** Sch. 4 para. 51 in force at 1.10.2013 for specified purposes by S.I. 2013/2227, art. 2(k) (with art. 3)

- 52 (1) In determining how to proceed in accordance with rules made for it by the CMA Board under paragraph 51(1), and in determining its own procedure under paragraph 51(5), a group must have regard to any guidance issued by the CMA Board.
- (2) Before issuing guidance for the purposes of this paragraph, or amending or revoking it, the CMA Board must consult such persons as it considers appropriate.

#### Commencement Information

**I34** Sch. 4 para. 52 in force at 1.10.2013 for specified purposes by S.I. 2013/2227, art. 2(I) (with art. 3)

- 53 (1) Rules made under paragraph 51 may—
- (a) make different provision for different cases or different purposes;
  - (b) be varied or revoked by rules subsequently made under that paragraph.
- (2) They may in particular make provision—
- (a) for particular stages of a merger investigation, market investigation, or special investigation to be dealt with in accordance with a timetable and for revision of that timetable;
  - (b) as to the documents and information that must be given to a relevant group in connection with a merger investigation, market investigation or special investigation;
  - (c) as to the documents and information that a relevant group must give to other persons in connection with such an investigation.

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- (3) Rules making provision as described in sub-paragraph (2)(a) or (2)(b) may, in particular, permit or require a relevant group to disregard documents or information given after a particular date.
- (4) Rules making provision as described in sub-paragraph (2)(c) may in particular make provision for the notification or publication of, and for consultation about, provisional findings of a relevant group.
- (5) Rules made under paragraph 51 may make provision as to the quorum of relevant groups.
- (6) They may make provision—
  - (a) as to the extent (if any) to which persons interested or claiming to be interested in a matter under consideration that is specified or described in the rules are allowed—
    - (i) to be present before or heard by a relevant group, either by themselves or by their representatives;
    - (ii) to cross-examine witnesses;
    - (iii) otherwise to take part;
  - (b) as to the extent (if any) to which sittings of a relevant group are to be held in public;
  - (c) generally in connection with any matters permitted by rules making provision as described in paragraph (a) or (b) (including, in particular, provision for a record of any hearings).
- (7) Rules made under paragraph 51 may make provision for—
  - (a) the notification or publication of information relating to merger investigations, market investigations or special investigations;
  - (b) consultation about such investigations.
- (8) Rules made under paragraph 51 for market reference groups may make provision as to the involvement of any public interest expert in the market investigation in connection with the reference under section 140A of the Enterprise Act 2002 in relation to which the expert was appointed.
- (9) For the purposes of this paragraph—

“market investigation” means an investigation carried out by a market reference group in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;

“merger investigation” means an investigation carried out by a merger reference group in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45, or 62 of the Enterprise Act 2002;

“public interest expert” means a person appointed under section 141B of the Enterprise Act 2002 in relation to a reference under section 140A(6) of that Act;

“relevant group” means a market reference group, a merger reference group, or a special reference group;

“special investigation” means an investigation carried out by a special reference group in connection with a provision listed in paragraph 51(6)(c).

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**Changes to legislation:** There are currently no known outstanding effects for the Enterprise and Regulatory Reform Act 2013, SCHEDULE 4. (See end of Document for details)

### Commencement Information

**I35** Sch. 4 para. 53 in force at 1.10.2013 for specified purposes by S.I. 2013/2227, art. 2(k) (with art. 3)

VALID FROM 01/04/2014

#### *Procedure of other CMA groups*

- 54 (1) Subject to any special or general directions given by the Secretary of State, and to any provision made by or under any enactment, a CMA group that is not a group of a type referred to in paragraph 51(1) may determine its own procedure.
- (2) It may, in particular, determine its quorum, and determine—
- (a) the extent (if any) to which persons interested or claiming to be interested in a matter under consideration are allowed—
    - (i) to be present before or heard by it, either by themselves or by their representatives;
    - (ii) to cross-examine witnesses;
    - (iii) otherwise to take part;
  - (b) the extent (if any) to which its sittings are to be held in public.
- (3) In determining its procedure under sub-paragraph (1), a CMA group must have regard to any guidance issued by the CMA Board.

VALID FROM 01/04/2014

#### *CMA group decision: requirement for two thirds majority*

- 55 For the purposes of paragraphs 56 to 58, a “qualifying majority decision” is a decision made by a CMA group which is that of at least two-thirds of the members of the group.

VALID FROM 01/04/2014

- 56 (1) This paragraph applies for the purposes of Part 3 of the Enterprise Act 2002.
- (2) Where a decision of a CMA group under section 35(1) or 36(1) of that Act that there is an anti-competitive outcome is not a qualifying majority decision, it is to be treated as a decision under that section that there is not an anti-competitive outcome.
- (3) Where a decision of a CMA group under section 47 of that Act is not a qualifying majority decision—
- (a) in the case of a decision that a relevant merger situation has been created, it is to be treated as a decision under section 47 that no such situation has been created;
  - (b) in the case of a decision that the creation of a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods

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- and services, it is to be treated as a decision under section 47 that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
- (c) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it is to be treated as a decision under section 47 that no such arrangements are in progress or in contemplation;
  - (d) in the case of a decision that the creation of such a situation as is mentioned in paragraph (c) may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods and services, it is to be treated as a decision under section 47 that the creation of that situation may be expected not to result in such a substantial lessening of competition.
- (4) Where a decision of a CMA group under section 63 of that Act is not a qualifying majority decision—
- (a) in the case of a decision that a special merger situation has been created, it is to be treated as a decision under section 63 that no such situation has been created;
  - (b) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it is to be treated as a decision under section 63 that no such arrangements are in progress or in contemplation.
- (5) Expressions used in this paragraph are to be construed in accordance with Part 3 of the Enterprise Act 2002.

VALID FROM 01/04/2014

- 57 (1) This paragraph applies for the purposes of Part 4 of the Enterprise Act 2002.
- (2) Where a decision under section 134, 141 or 141A of that Act is not a qualifying majority decision—
- (a) in the case of a decision on an ordinary reference that a feature or combination of features of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom, it is to be treated as a decision that the feature or (as the case may be) combination of features of that relevant market does not prevent, restrict or distort such competition;
  - (b) in the case of a decision on a cross-market reference that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom, it is to be treated as a decision that that feature or (as the case may be) combination of features as it relates to goods or services of those descriptions does not prevent, restrict or distort such competition.

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- (3) Accordingly, a CMA group is to be treated as having decided under section 134, 141 or 141A that there is no adverse effect on competition in relation to an ordinary reference or a cross-market reference if—
- (a) one or more than one decision of the group, in relation to the reference, is to be treated as mentioned in sub-paragraph (2)(a) or (as the case may be) (b), and
  - (b) there is, in relation to the reference, no other relevant decision of the group.
- (4) “Relevant decision”, in sub-paragraph (3)(b), means—
- (a) in relation to an ordinary reference, a decision that is not to be treated as mentioned in sub-paragraph (2)(a), and which is that a feature or combination of features of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom;
  - (b) in relation to a cross-market reference, a decision that is not to be treated as mentioned in sub-paragraph (2)(b), and which is that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.
- (5) Where a decision of a CMA group under section 141A of that Act is not a qualifying majority decision, in the case of a decision under section 141A(4) that the feature or combination of features in question operates or may be expected to operate against the public interest, it is to be treated as a decision under section 141A that the feature or combination of features in question does not operate nor may be expected to operate against the public interest.
- (6) Expressions used in this paragraph are to be construed in accordance with Part 4 of the Enterprise Act 2002.

VALID FROM 01/04/2014

- 58 A decision made by a CMA group is also subject to any other provision made by or under any enactment about decisions that are not qualifying majority decisions.

## PART 4

### INTERPRETATION AND TRANSITIONAL AND TRANSITORY PROVISION

#### *Interpretation*

- 59 (1) In this Schedule, “enactment” means—
- (a) an enactment contained in this or any other Act;
  - (b) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978;

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- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (d) a Measure or Act of the National Assembly for Wales;
  - (e) an enactment contained in, or in an instrument made under, Northern Ireland legislation (within the meaning of the Interpretation Act 1978).
- (2) Any reference in this Schedule to an enactment includes a reference to an enactment whenever passed or made.

**Commencement Information**

**I36** Sch. 4 para. 59 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 60 References in this Schedule to the commencement date are to the date on which section 25(3) comes into force.

**Commencement Information**

**I37** Sch. 4 para. 60 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Members of the Competition Commission*

- 61 (1) This paragraph applies—
- (a) in relation to any appointments under paragraph 1(1)(b) to the CMA panel that are made before the abolition of the Competition Commission under section 26, to any person who is a panel member of the Competition Commission and whose term of office as such is not due to expire before the abolition of the Competition Commission under that section;
  - (b) in relation to any other appointment under paragraph 1(1)(b) to the CMA panel, to a person who was a panel member of the Competition Commission immediately prior to its abolition under section 26.
- (2) A person to whom this paragraph applies may be appointed under paragraph 1(1)(b) as a member of the CMA panel.
- (3) But the terms of the person's appointment as a member of the CMA panel must not be such that the sum of the period of his or her office as a member of the CMA panel, and of the period of his or her office as a panel member of the Competition Commission (excluding any period when he or she also holds office as a member of the CMA panel), exceeds eight years.
- (4) Paragraph 4(1) applies for the purposes of the person's re-appointment as a member of the CMA panel as it does for the purposes of the re-appointment of a CMA panel member to whom this paragraph does not apply.
- (5) The power conferred by section 100 includes power to make provision for the appointment of panel members of the Competition Commission as members of the CMA panel, or for the re-appointment of persons who are appointed as members of the CMA panel by virtue of sub-paragraph (2), for the purpose of enabling anything in the process of being done by or on behalf of the Competition Commission immediately prior to its abolition to be completed by or on behalf of the CMA; and

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nothing in sub-paragraphs (1) to (4) restricts the provision that may be made for that purpose.

**Commencement Information**

**I38** Sch. 4 para. 61(1)-(4) in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 62 Except as provided for by paragraph 61, a person who holds or has held office as a panel member of the Competition Commission at any time prior to its abolition may not be appointed under paragraph 1(1)(b) as a member of the CMA panel.

**Commencement Information**

**I39** Sch. 4 para. 62 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

- 63 References in paragraphs 61 and 62 to a panel member of the Competition Commission are to a person appointed as a member of the Competition Commission of a kind mentioned in paragraph 2(3) of Schedule 7 to the Competition Act 1998.

**Commencement Information**

**I40** Sch. 4 para. 63 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*Financial years of the CMA*

- 64 (1) If the duration of the period beginning with the commencement date and ending with the next 31 March is six months or more, the first financial year of the CMA is that period.
- (2) But if the duration of that period is less than six months, the first financial year of the CMA is the period beginning with the commencement date, and ending with the 31 March in the year following the next 31 March after the commencement date.
- (3) The subsequent financial years of the CMA are each successive period of 12 months.

**Commencement Information**

**I41** Sch. 4 para. 64 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)

*First annual plan of the CMA*

- 65 (1) The CMA is to publish its first annual plan within the period of three months beginning with the commencement date.
- (2) The first annual plan is to relate to the period beginning with the date of publication of the plan, and ending with the date on which the CMA's first financial year ends.

**Commencement Information**

**I42** Sch. 4 para. 65 in force at 1.10.2013 by S.I. 2013/2227, art. 2(j) (with art. 3)



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**Changes to legislation:**

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