

SCHEDULE 1

Regulation 4, 6, 9 and 26

RULES

1. Form of application
2. Joint applications
3. Copies
4. Content of application
5. Date of application
6. Notification of application to other parties
7. Public register
8. Consultation of public following applications
9. Investigations
10. Proposed infringement and conditional exemption decisions
11. Notice of decision
12. Further action after a decision
13. Directions
14. Interim measures
15. Application for extension of exemption
16. Cancellation etc. of exemption
17. Associations of undertakings
18. Time limits and giving notices
19. Confidential third party information
20. Third party appeals
21. Interpretation and supplemental
Annex— — Form ERN

Signature
Explanatory Note

Form of application

1.—(1) An application under regulation 7 for an agreement to be examined, or under regulation 10 for conduct to be considered, shall consist of:

- (a) Form ERN; and
- (b) the copies of Form ERN required by rule 3 below.

(2) The documents referred to in sub-paragraphs (1)(a) and (b) above shall be submitted to the Director.

Joint applications

2. Where a joint application is submitted, Form ERN shall be submitted to the Director by or on behalf of all the applicants, and a joint representative may be appointed as authorised to act on behalf of some or all of the applicants for the purposes of these rules.

Copies

3.—(1) Two copies of Form ERN, in addition to the original, shall be submitted to the Director.

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(2) Supporting documents submitted as part of Form ERN shall be either originals or true copies, and the applicant shall certify that each copy is a true copy of the original.

Content of application

4.—(1) The information submitted as Form ERN shall, subject to paragraph (3) below, be correct and complete.

(2) If the applicant considers that the Director would find any part of the information contained in the application to be confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 21 below, he shall set out that part of the information in a separate annex to the application marked “confidential information” and provide a written explanation as to why he considers that the Director should treat it as such.

(3) The Director may, by giving notice in writing to the applicant, dispense with the obligation to submit any particular information, including any supporting document, forming part of Form ERN, if he considers that such information or document is unnecessary for the examination of the agreement, or the consideration of the conduct, which is the subject of the application.

(4) Where the applicant knows of material changes in the information contained in the application he shall without delay communicate those changes to the Director.

Date of application

5.—(1) Except where paragraph (3) below applies, an application is made (and notification for the purposes of regulations 7 or 10, whichever is applicable, is given) on the date on which Form ERN is received by the Director.

(2) The Director shall acknowledge receipt of an application by giving notice in writing to the applicant without delay.

(3) Where the Director finds that the information submitted as Form ERN is incomplete he shall, without delay and in any event within one month from the date on which that information was received by the Director, give notice in writing to the applicant of which information, by reference to the Annex hereto, is outstanding.

(4) Where the Director has invoked paragraph (3) above he shall give notice in writing to the applicant of such time limit as the Director considers is appropriate for the outstanding information to be received by him.

(5) Where the Director has invoked paragraph (3) above the application shall be made (and notification for the purposes of regulations 7 or 10, whichever is applicable, shall be given) on the date on which he receives the outstanding information.

(6) If the Director has invoked paragraph (3) above and has not received the outstanding information by the date of expiry of the time limit notified to the applicant under paragraph (4) above, or of such further period, if any, as he considers appropriate, he shall return the information submitted as Form ERN to the applicant and shall inform him in writing that his application has not been made in accordance with this rule.

Notification of application to other parties

6.—(1) An applicant who is a party to an agreement must take all reasonable steps to notify all other parties to the agreement of whom he is aware that an application has been made for a decision.

(2) If the conduct to which an application relates is conduct of two or more persons, the applicant must take all reasonable steps to notify all of the other parties of whom he is aware that an application has been made for a decision.

(3) Notification by an applicant under paragraphs (1) or (2) above shall be written and shall be given within seven working days from the date on which the applicant receives acknowledgement of receipt of his application by the Director; the applicant shall provide a copy of the notification to the Director without delay.

Public register

7.—(1) The Director shall maintain a register in which there shall be entered, in respect of every application made under regulation 7 or 10, a summary of the nature and objectives of the agreement or conduct which is the subject of the application (as referred to in Part 4 of the Annex hereto) and an indication of the final outcome of the application.

(2) The register shall be open to public inspection:

- (a) at the Office of Fair Trading, between 10.00 a.m. and 4.30 p.m. on every working day; and
- (b) on the Office of Fair Trading's website on the Internet.

(3) In determining an application under regulation 7 or 10, the Director must take into account any representations made to him by persons other than the applicant.

Consultation of public following applications

8.—(1) On an application under regulation 7 for an agreement to be examined:

- (a) if the Director proposes to grant an exemption, whether or not subject to conditions or obligations, he shall consult the public; and
- (b) if the Director proposes to make a decision that the prohibition in Article 81(1) has not been infringed, he may consult the public.

(2) If, on an application under regulation 10 for conduct to be considered, the Director proposes to make a decision that the prohibition in Article 82 has not been infringed, he may consult the public.

Investigations

9.—(1) An officer shall grant a request of the occupier of premises entered by the officer ("the occupier") to allow a reasonable time for the occupier's legal adviser to arrive at the premises before the investigation continues, if the officer considers it reasonable in the circumstances to do so and if he is satisfied that such conditions as he considers it appropriate to impose in granting the occupier's request are, or will be, complied with.

(2) For the purposes of paragraph (1) above, "a reasonable time" means such period of time as the officer considers is reasonable in the circumstances.

(3) A person required by the Director under regulation 12(6)(a)(ii) to provide an explanation of a document may be accompanied by a legal adviser.

Proposed infringement and conditional exemption decisions

10.—(1) If the Director proposes to make a decision that the prohibition in Article 81(1) or the prohibition in Article 82 has been infringed he shall give written notice:

- (a) where an application has been made, to the applicant and, subject to rules 17 and 18 below, to those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be, which the Director considers has led to the infringement; and
- (b) where no application has been made, subject to rules 17 and 18 below, to each person who the Director considers is a party to the agreement, or is engaged in the conduct, as the case may be, which the Director considers has led to the infringement.

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(2) If the Director proposes to grant an exemption subject to conditions or obligations, he shall give written notice to the applicant and, subject to rules 17 and 18 below, to those persons whom the applicant has identified in the application as being the other parties to the agreement to which the application relates.

(3) A written notice given under paragraph (1) or (2) above shall state the facts on which the Director relies, the matters to which he has taken objection, the action he proposes and his reasons for it.

(4) A written notice given under paragraph (1) or (2) above shall specify a period within which each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, may indicate to the Director any part of the information contained in the notice which he considers the Director would find to be confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 21 below.

(5) Subject to paragraph (6) below, the Director shall give each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, a reasonable opportunity to inspect the documents in the Director's file relating to the proposed decision.

(6) The Director may withhold any document:

- (a) to the extent that it contains information which a person has stated to the Director to be, and which the Director has found to be, confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 21 below;
- (b) which is, in the opinion of the Director, otherwise confidential; or
- (c) which is internal, in the sense given to that word by sub-paragraph (1)(e) of rule 21 below.

(7) Subject to rules 17 and 18 below, the Director shall give each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, written notice of the period within which that person may make written representations to him on the information referred to in paragraph (3) above.

(8) The Director shall give each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, a reasonable opportunity to make oral representations to him on the information referred to in paragraph (3) above.

Notice of decision

11.—(1) If the Director has made a decision as to whether or not an agreement has infringed the prohibition in Article 81(1), or as to whether or not conduct has infringed the prohibition in Article 82, he shall, without delay:

(a) give written notice of the decision:

- (i) where the decision was made following an application, to the applicant and, subject to rules 17 and 18(2) below, to those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be; and
- (ii) where no application has been made, subject to rules 17 and 18(2) below, to each person who the Director considers is a party to the agreement, or is engaged in the conduct, as the case may be,

stating in the decision the facts on which he bases it and his reasons for making it; and

(b) publish the decision.

(2) Where the Director determines an application for a decision by exercising his discretion not to give a decision, he shall give written notice of that fact to:

- (a) the applicant; and

- (b) subject to rules 17 and 18 below, those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be.

Further action after a decision

12. If, having made a decision that an agreement has not infringed the prohibition in Article 81(1), or that conduct has not infringed the prohibition in Article 82, the Director proposes to take further action under the Regulations, he shall:

- (a) where the decision was made following an application, consult the applicant and, subject to rules 17 and 18 below, those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be, which is the subject of the decision; and
- (b) where no application has been made, subject to rules 17 and 18 below, consult each person who the Director considers is a party to the agreement, or is engaged in the conduct, as the case may be, which is the subject of the decision.

Directions

13.—(1) Where the Director gives a direction to a person under regulation 18 or 19, he shall at the same time inform that person in writing of the facts on which he bases the direction and his reasons for giving it.

- (2) The Director shall publish directions given under regulation 18, 19 or 21.

Interim measures

14.—(1) Subject to paragraph (2) below, if the Director proposes to give a direction under regulation 21, he shall give each person to whom he proposes to give the direction a reasonable opportunity to inspect the documents in the Director's file relating to the proposed direction.

- (2) The Director may withhold any document:
 - (a) to the extent that it contains information which a person has stated to the Director to be, and which the Director has found to be, confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 21 below;
 - (b) which is, in the opinion of the Director, otherwise confidential; or
 - (c) which is internal, in the sense given to that word by sub-paragraph (1)(e) of rule 21 below.

(3) Where the Director gives a direction to a person under regulation 21, he shall at the same time inform that person in writing of the facts on which he bases the direction and his reasons for giving it.

Application for extension of exemption

15.—(1) An application under regulation 4(4) for an extension of the period for which an exemption has effect shall consist of Form ERN, and the copies of Form ERN required under paragraph (4) below, and shall be submitted to the Director.

- (2) If the Director proposes to grant the application, he shall consult the public.
- (3) If the Director has made a decision as to whether or not to grant the application, he shall:
 - (a) give written notice of the decision to:
 - (i) the applicant; and
 - (ii) subject to rules 17 and 18(2) below, those persons whom the applicant has identified in the application as being the other parties to the agreement; and

(b) publish the decision,

stating in the decision the facts on which he bases it, his reasons for it and, if appropriate, the period of extension granted.

(4) Rules 2 (joint applications), 3 (copies), 4 (content of application), 5 (date of application) and 7 (public register) above shall apply to an application submitted under this rule as they apply, to the extent that they apply, to an application submitted under rule 1 above; rule 5(1) and (5) above shall also apply as if the parts in brackets were omitted from them.

Cancellation etc. of exemption

16.—(1) If the Director proposes to take any of the steps mentioned in regulation 5(1), he shall consult the public, the person who applied for the exemption and, subject to rules 17 and 18 below, those persons whom that person identified in his application as being the other parties to the agreement to which the exemption relates.

(2) If the Director issues a notice in writing under regulation 5(1), he shall:

(a) give notice in writing of his decision to do so to:

(i) the person who applied for the exemption; and

(ii) subject to rules 17 and 18(2) below, those persons whom the person who applied for the exemption identified in his application as being the other parties to the agreement; and

(b) publish the decision,

stating in the decision the facts on which he bases it and his reasons for it.

Associations of undertakings

17.—(1) Where a rule requires the Director to give written notice, or notice in writing, of any matter to an association of undertakings and the notice does not relate to an agreement or to conduct which is the subject of an application to the Director by that association, he shall give such notice to the director, secretary, manager or other similar officer of the association on its behalf.

(2) Where a rule requires the Director to give written notice, or notice in writing, of any matter to each of more than fifty members of an association of undertakings, he may, instead of giving such notice to any such member, give such notice to the director, secretary, manager or other similar officer of the association on that member's behalf, provided that individual notice shall be given to any member who has made an application to the Director in respect of the agreement or the conduct to which the notice relates.

Time limits and giving notices

18.—(1) Where it is not reasonably practicable for the Director to give written notice to a person:

(a) other than the applicant, under rule 10(1), (2) or (7) or rule 11(2) above;

(b) other than the applicant, in order to consult that person under rule 12 above;

(c) other than the person who applied for the exemption and the public, in order to consult that person under rule 16(1) above; or

(d) in order to consult that person under rule 20(6) below,

in particular having regard to the number of persons to whom such notice is required to be given, he may, instead of so doing, take all the steps mentioned in paragraph (3) below.

(2) Where it is not reasonably practicable for the Director to give:

- (a) written notice of the decision to a person, other than the applicant, under rule 11(1)(a) or 15(3)(a) above;
 - (b) written notice of his decision to a person, other than the applicant, under rule 20(7) below;
 - (c) notice in writing of his decision to a person under rule 16(2)(a), other than the person who applied for the exemption; or
 - (d) written notice in order to consult a third party under rule 21(3) below,
- in particular having regard to the number of persons to whom such notice is required to be given, he may, instead of so doing, take all the steps mentioned in sub-paragraph (3)(b) below.

(3) The steps mentioned for the purposes of paragraphs (1) and (2) above are the following:

- (a) publish the notice by means of entry in the register maintained by the Director under rule 7 above; and
- (b) cause the notice to be published in:
 - (i) the London, Edinburgh and Belfast Gazettes;
 - (ii) at least one national daily newspaper; and
 - (iii) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal.

(4) Except where paragraph (1) or (2) above is invoked, where these rules allow or require written notice, or notice in writing, to be given to a person, such notice shall be treated as having been given on the date on which that person receives it.

(5) Where paragraph (1) or (2) above is invoked, the notice shall be treated as having been given on the date of its publication in accordance with the paragraph invoked.

(6) Where the time prescribed by these rules for doing any act expires on a day which is not a working day, the act is in time if done before 6 p.m. on the next following working day.

(7) Where an act done in accordance with these rules is done on a day which is not a working day, or after 6 p.m. on a working day, the act shall be treated as done on the next following working day.

Confidential third party information

19.—(1) If a person gives information to the Director in connection with the exercise of any of the Director's functions under the Regulations, in relation to an agreement to which that person is not a party, or in relation to conduct in which that person has not engaged, and that person considers that the Director would find any part of the information to be confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 21 below, he shall set out that part of the information in a separate annex marked "confidential information" and provide a written explanation as to why he considers that the Director should treat it as such.

(2) The Director shall, if he proposes to disclose, in connection with the exercise of any of his functions under the Regulations, any of the information contained in an annex provided in accordance with paragraph (1) above, give the person who provided the information:

- (a) written notice of his proposed action; and
- (b) a reasonable opportunity to make representations to him,

if it is reasonably practicable for him to do so.

Third party appeals

20.—(1) An application under regulation 26(1) asking the Director to withdraw or vary a decision shall:

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- (a) be submitted in writing to the Director within one month from the date of publication of that decision by means of entry in the register maintained by the Director under rule 7 above;
 - (b) comply with paragraph (2) below; and
 - (c) include the documents specified in paragraph (3) below.
- (2) An application submitted under paragraph (1) above shall be signed by the applicant or by a duly authorised representative of the applicant, and shall state the applicant's reasons:
- (a) for considering that he has a sufficient interest in the decision referred to in paragraph (1) above; or
 - (b) where he claims to represent persons who have a sufficient interest in that decision:
 - (i) for claiming that he represents those persons; and
 - (ii) for claiming that those persons have a sufficient interest in that decision.
- (3) The documents specified for the purposes of paragraph (1) above are the following:
- (a) three copies of the application; and
 - (b) where the application is signed by a solicitor or other representative of an applicant, written proof of that representative's authority to act on that applicant's behalf.
- (4) The application is made on the date on which it is received by the Director; the Director shall acknowledge receipt of the application by giving notice in writing to the applicant without delay.
- (5) Where the applicant knows of material changes in the information contained in the application he shall without delay communicate those changes to the Director.
- (6) If the Director proposes to grant the application, he shall, subject to rules 17 and 18 above, consult all persons whom he was required by these rules to notify of the decision referred to in paragraph (1) above.
- (7) If the Director grants the application, he shall give written notice of his decision to the applicant, and, subject to rules 17 and 18(2) above, to all persons whom he was required by these rules to notify of the decision referred to in paragraph (1) above, stating in his decision the facts on which he bases it and his reasons for it, and he shall publish his decision.

Interpretation and supplemental

21.—(1) In these rules:—

- (a) “agreement” shall be construed by reference to regulation 2(3);
- (b) “applicant” means:
 - (i) in rules 2, 3(2), 4(2) and (3), 5(2), (3), (4) and (6), 6, 7(3) and 20(2) and (3)(b) above and paragraph (1)(i) below, person who is making the application; and
 - (ii) in rules 4(4), 10, 11, 12, 15(3)(a) and 20(4), (5) and (7) above, person who has made the application;
- (c) information is confidential if it is:
 - (i) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm his interests;
- (d) “Form ERN” means, subject to rule 4(3) above:
 - (i) the information, including any supporting document, required by the Annex hereto; and

- (ii) the declaration made in the form set out in Part 2A of the Annex hereto;
 - (e) “internal” document includes the following:
 - (i) a document produced within the office of either the Director or a regulator concerning a case; and
 - (ii) correspondence between the Director and a regulator, or between regulators, concerning a case; and
 - (iii) correspondence between the Director, or a regulator, and a government department or another competition authority, concerning a case;
 - (f) “an officer” means an investigating officer within the meaning of regulation 13(1) or a named officer of the Director authorised by a warrant issued under regulation 14;
 - (g) “regulator” has the meaning given to it by section 54 of the Act;
 - (h) “working day” means day which is not Saturday, Sunday or any other day on which the Office of Fair Trading is closed for business; and
 - (i) “other party” in relation to conduct of two or more persons, means one of those persons other than the applicant.
- (2) Where the Director, if he proposes to take action, is required to consult a person, he shall:
- (a) except where otherwise indicated, give written notice to that person; and
 - (b) state in that notice the action he proposes, his reasons for it and the period within which that person may make written representations to him on these matters.
- (3) Where the Director, if he proposes to take action:
- (a) is required to consult the public; or
 - (b) proposes to consult the public in exercise of his discretion to do so,
- he shall publish a notice stating the action he proposes, his reasons for it and the period within which written representations may be made to him on these matters, and shall, subject to rules 17 and 18(2) above, consult any third party (being in relation to the agreement or conduct concerned, a person who is not a party to the agreement or who has not engaged in the conduct) who appears to him likely to be affected by the action he proposes.
- (4) Where the Director is required to publish a decision, a proposal or any other information, he shall do so by means of entry in the register maintained by him under rule 7 above.

Annex

FORM ERNINFORMATION REQUIRED FOR APPLICATIONS FOR A DECISION UNDER THE EC COMPETITION LAW (ARTICLES 84 AND 85) ENFORCEMENT REGULATIONS 2001

PART 1:

INTRODUCTION

This document lists the information and supporting documents which must be provided when making an application for a decision under regulation 7 or 10.

If the Applicant(s) considers that the Director would find any part of the information contained in the application to be confidential, in the sense given to that word by rule 21(1), he must set out that part of the information in a separate annex to the application marked “confidential information” and provide a written explanation as to why he considers that the Director should treat it as such.

This document must also be used when making an application under regulation 4(4) (see rule 15).

PART 2:

INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION

1 INFORMATION ABOUT THE UNDERTAKING(S) SUBMITTING THE APPLICATION (THE “APPLICANT(S)”) AND THE OTHER PARTIES TO THE AGREEMENT

1

1.1 Please give the full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the Applicant(s) and a brief description of the nature of its business. If the Applicant(s) is a partnership, sole trader or other unincorporated body trading under a business name, give the name(s) and address(es) of the partners or proprietor(s). Please quote any reference which should be used.

1.2 Please give the full name, address, telephone and fax numbers and e-mail address (where available) of any representative(s) who has been authorised to act for the Applicant(s), indicating whom they represent and in what capacity (e.g. a solicitor).

1.3 Where the declaration to be made in the form set out in Part 2A is signed by a solicitor or other representative of the Applicant(s), please provide written proof of that representative’s authority to act on behalf of the Applicant(s).

1.4 If a joint application is being submitted, indicate whether or not a joint representative has been appointed. If a joint representative has been appointed, give his full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available), and indicate whom he represents.

1.5 Please give full names, addresses (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers, nature of business, and brief description of the other parties to the agreement and any other persons engaging in the conduct which is the subject of the application, together with the name of a contact at each undertaking concerned, their address, telephone and fax numbers and details of their position in the undertaking.

1.6 Please provide details of the steps taken or to be taken to notify all the other parties to the agreement or conduct which is the subject of the application of whom the Applicant(s) is aware that the application is being submitted. Indicate whether those parties have received a copy of the

application and if so, whether confidential information (as defined in rule 21(1)) was included in the copy of the application. If the Applicant(s) considers that it is not practicable to notify the other parties of the application, please give the reasons why it is not practicable.

1.7 Please identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this form, a group relationship exists where one undertaking—

- owns more than half the capital or business assets of another undertaking; or
- has the power to exercise more than half the voting rights in another undertaking; or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
- has the right to manage the affairs of another undertaking.
- An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) forms part of the group of each of these undertakings.

2 PURPOSE OF THE APPLICATION

2

2.1 Specify whether the application is being made in relation to the prohibition in Article 81(1), the prohibition in Article 82 or both.

2.2 State which provisions or effects of the agreement or conduct which is the subject of the application might in the Applicant's view raise questions of compatibility with the prohibition in Article 81(1) and/or the prohibition in Article 82, and give reasons for that view.

2.3 If the application is for an extension of an exemption, state the date of expiry of the existing exemption and the reasons why an extension is sought. Please also give details of any changes that have occurred in the relevant market(s) (see 6.2 and 6.3 below) and in the agreement itself since the grant of the exemption. Specify how any changes impact on the fulfilment by the agreement of the conditions set out in Article 81(3). Please also enclose a copy of the decision granting the exemption.

3 JURISDICTION

3

3.1 Please state whether the agreement or conduct which is the subject of the application is also the subject of an application to any competition authority outside the United Kingdom. If so, please provide brief details (where applicable) of the outcome of such application, if known.

3.2 Please provide details of any previous contacts of which the Applicant(s) is aware with the Office of Fair Trading or the European Commission relating to the agreement or conduct which is the subject of the application.

4 DETAILS OF THE AGREEMENT OR CONDUCT

4

4.1 Please provide a brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date(s) and duration).

4.2 If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.

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4.3 Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.

4.4 If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.

4.5 Please identify those Member States of the European Community trade between which may be affected by the arrangements. Please give reasons for your reply to this question, giving data on trade flows where relevant. Furthermore please state whether trade between the Community and any third countries is affected, again giving reasons for your reply.

5 INFORMATION ON THE PARTIES TO THE AGREEMENT OR CONDUCT AND THE GROUPS TO WHICH THEY BELONG

5

5.1 Please attach one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings.

5.2 Please list the product and/or services market(s) in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.7 above) to which they belong are active.

6 THE RELEVANT PRODUCT AND GEOGRAPHIC MARKET(S)

6

6.1 A “*relevant product market*” comprises all those products and/or services regarded by the consumer of the products or acquirer of the services as interchangeable or substitutable by reason of the products' characteristics, price and intended use. The “*relevant geographic market*” comprises the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.

6.2 Please supply and explain the definition of the relevant product market(s) which in the opinion of the Applicant(s) should form the basis of the analysis of the application. State the specific products or services directly or indirectly affected by the agreement or conduct which is the subject of the application and other products or services that may be viewed as substitutable. Give reasons for all assumptions or findings.

6.3 Please supply and explain the definition of the relevant geographic market(s) which in the opinion of the Applicant(s) should form the basis of the analysis of the application. Please identify the geographic scope of the relevant market(s), with reasons. Give reasons for all assumptions or findings.

6.4 For each of the relevant product and geographic market(s) identified in 6.2 and 6.3 above, give details of:

- (a) the level of concentration in the markets;
- (b) the nature and extent of vertical integration;
- (c) the direction and extent of trade within the European Community and/or between the Community and third countries;
- (d) the prevailing methods of distributing products and services, including the extent of the involvement of undertakings which are not party to the agreement or conduct which is the subject of the application (i.e. third parties), and their significance;

- (e) the significance of customer preferences, in terms of brand loyalty, product differentiation and the provision of a full range of products;
- (f) the categories and relative strengths of different types of customer, including private and public sector purchasers; and
- (g) the extent to which customers have long-term relationships with suppliers.

Where available, please provide a copy of the most recent long-term market studies (produced by the Applicant(s) in-house or commissioned by the Applicant(s) from outside consultants) which assess and/or analyse the relevant product market(s) and/or the relevant geographic market(s). Please supply references to any external published studies of the relevant product market(s) and/or the relevant geographic market(s) or, where available, please supply a copy of each such study with the application.

6.5 For each of the parties to the agreement or conduct which is the subject of the application, provide a list of all undertakings belonging to the same group (within the meaning of 1.7 above) which are active in the relevant product market(s) identified in 6.2 above, and those active in markets neighbouring the relevant product market(s)—that is, active in products and/or services which are regarded by the consumer as imperfect and partial substitutes for those products and/or services included in the relevant product market(s) as defined in 6.2 above. Such undertakings must be identified even if they sell the product or service in question in geographic areas other than those in which the parties to the agreement or conduct which is the subject of the application operate. Please list the name, place of incorporation, exact product and/or service provided and the geographic scope of operation of each member of the group.

7 THE POSITION OF THE UNDERTAKINGS IN THE RELEVANT PRODUCT MARKET(S)

7

7.1 Please provide the following information in respect of each of the previous three calendar or financial years, as available:

- (a) the best estimates of the Applicant(s) of the market shares of each party to the agreement or conduct which is the subject of the application, in the products or services in the relevant product market(s) on the relevant geographic market(s), as identified in 6.2 and 6.3 above, and, if different, in the European Community, and in each Member State of the Community (for this section, where market shares are less than 20%, please simply state which of the following bands are relevant: less than 5%, less than 10%, less than 15%, less than 20%);
- (b) identify the five main competitors of each party to the agreement or conduct which is the subject of the application in the relevant product and geographic market(s), and give the best estimates of the Applicant(s) of their market shares in the products or services in the relevant product and geographic market(s); provide each competitor's name, address, telephone and fax numbers, and, where possible, a contact name;
- (c) identify the five customers of each party to the agreement or conduct which is the subject of the application, in the relevant product and geographic market(s), giving the customer's name, address, telephone and fax numbers, and, where possible, a contact name; and
- (d) details of each party to the agreement or conduct's interests in, and agreements with, any other undertakings competing in the relevant product and geographic market(s), together with the best estimates of the Applicant(s) of those other undertakings' market shares in the products or services in the relevant product and geographic market(s), if known.

Information requested in this section must be provided for the group to which each party to the agreement or conduct which is the subject of the application belongs (within the meaning of

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1.7 above) and not in relation to the individual undertakings which are party to the agreement or conduct which is the subject of the application.

Justification for the figures provided in response to the above must be given. Thus, for each answer to (a), (b) and (d), total market value or volume must be stated, together with the sales or turnover of each of the undertakings in question. The source or sources of the information should also be given and one copy should be provided of any document, where available, from which information has been taken.

8 MARKET ENTRY AND POTENTIAL COMPETITION IN THE RELEVANT PRODUCT AND GEOGRAPHIC MARKET(S)

8

8.1 For each of the relevant product and geographic market(s) identified in 6.2 and 6.3 above, describe:

- (a) the factors influencing entry in product terms into the relevant product market(s); that is, the barriers which exist to prevent undertakings not presently manufacturing products or providing services within the relevant product market(s) from entering the market(s), taking account of, in particular but not exclusively, the extent to which:
- entry is influenced by the requirements of government authorisation or standard-setting, in any form, and any legal or regulatory controls on entry to the market(s);
 - entry is influenced by the need to have access to transport infrastructure;
 - entry is influenced by the availability of aircraft, vessels or other vehicles required for providing services;
 - entry is influenced by the length of contracts between an undertaking and its suppliers and customers; and
 - research and development and licensing patents, know-how and other intellectual property rights are important; and
- (b) the factors influencing entry in geographic terms into the relevant geographic market(s); that is, the barriers which exist to prevent undertakings already marketing or providing products or services within the relevant product market(s) outside the relevant geographic market(s) from extending sales into the relevant geographic market(s), taking account of, in particular but not exclusively, the importance of:
- trade barriers imposed by law;
 - local specifications or technical requirements;
 - procurement policies;
 - the existence of adequate and available local distribution and retailing facilities;
 - the need to have access to transport infrastructure; and
 - strong consumer preference for local brands or products.

8.2 Estimate the amount of time required for entry into the relevant product and geographic market(s), taking account of the individual barriers to entry referred to in the answer to 8.1 above.

8.3 State whether any new undertakings have entered the relevant product market(s) in geographic areas where the parties to the agreement or conduct which is the subject of the application sell, during the last three years. Identify these undertakings by full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and, where possible, a contact name. Please give the best estimates of the Applicant(s) of the market shares of each such undertaking in the products or services in the relevant product and geographic market(s).

EXEMPTION

9. If exemption from the prohibition in Article 81(1) is sought, explain how the agreement contributes to improving production or distribution and/or promoting technical or economic progress, and how consumers will be allowed a fair share of the resulting benefit. Explain how each restriction imposed by the agreement is indispensable to the attainment of those objectives, and how the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question (as identified in 6.2 and 6.3 above).

10 OTHER INFORMATION

10

10.1 Please provide details of trade publications in which advertisements seeking the views of third parties might be placed.

10.2 Please give any other information which the Applicant(s) considers may be helpful.

SUPPORTING DOCUMENTS

11. Please ensure that the Applicant(s) has attached the following documents (where relevant) to the application:

- (a) if 1.3 above applies, written proof of the representative's authority to act on the Applicant(s) behalf;
- (b) if 2.3 above applies, a copy of the decision granting the exemption;
- (c) if 4.2 above applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application;
- (d) one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings (see 5.1 above);
- (e) where available, one copy of the most recent long-term market studies which assess and/or analyse the relevant market(s) (in-house studies produced by the Application(s) or commissioned by the Applicant(s) from outside consultants) (see 6.4 above);
- (f) where available, one copy of any external studies of the relevant product and/or the relevant geographic market(s) (see 6.4 above); and
- (g) where available, one copy of any document from which information has been taken and provided in answer to 7.1 above.

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PART 2A:

Under regulation 24, it is an offence, punishable by a fine or imprisonment or both, to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, under regulation 33 its officers may be guilty of an offence.

Declaration

The undersigned declare that all the information given above and in the . . . pages annexed hereto is correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates of the underlying facts.

Place and date.....

Signatures

Status

Name(s) in block capitals

PART 3:

ACKNOWLEDGEMENT OF RECEIPT

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

To be completed by the Applicant(s)

To:

(name and address of Applicant(s))

.....

.....

The application dated

concerning

involving the following undertakings:

1.

2.

[and others]

To be completed by the Office of Fair Trading

was received on

and registered under reference number

Please quote this number in all correspondence with the Office of Fair Trading

PART 4:

—TO BE COMPLETED BY THE APPLICANT(S)

Information for the OFT public register

1. Please give the full names of the parties to the agreement(s) or conduct which is the subject of the application, as in the response to 1.1 and 1.5 above.
2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the nature and objectives of the agreement(s) or conduct which is the subject of the application.
3. Please describe the relevant product(s) or services(s) involved.