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STATUTORY INSTRUMENTS

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**2004 No. 1077**

**COMPETITION**

**The Competition Act 1998 (Concurrency) Regulations 2004**

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| <i>Made</i>                   | - - - - | <i>6th April 2004</i> |
| <i>Laid before Parliament</i> |         | <i>8th April 2004</i> |
| <i>Coming into force</i>      | - -     | <i>1st May 2004</i>   |

The Secretary of State, in exercise of the powers conferred on her by section 54(4), (5) and (6) and section 71 of the Competition Act 1998(1), hereby makes the following Regulations:

**Citation and Commencement**

1. These Regulations may be cited as the Competition Act 1998 (Concurrency) Regulations 2004 and shall come into force on 1st May 2004.

**Interpretation**

2. In these Regulations—

- (a) “the Act” means the Competition Act 1998;
- (b) “Article 81(1)” means Article 81(1) of the treaty establishing the European Community;
- (c) “Article 82” means Article 82 of the treaty establishing the European Community;
- (d) “the Chapter I prohibition” has the meaning given in section 2(8) of the Act;
- (e) “the Chapter II prohibition” has the meaning given in section 18(4) of the Act;
- (f) “competent person” means the OFT or a regulator;
- (g) “OFT” means the Office of Fair Trading;
- (h) “OFT’s rules” means rules made by the OFT and approved by an order made by the Secretary of State in accordance with section 51 of the Act;
- (i) “Part 1 functions” means any functions of the OFT under the provisions of Part 1 of the Act which can be exercised by a regulator;
- (j) “prescribed functions” means—

- (i) the exercise by any competent person of any of the functions of the OFT under the provisions of sections 25 to 29, sections 31A to 31C, section 31D(8) or section 31E of the Act or Schedule 6A to the Act;
- (ii) making a decision, as defined in section 46(3) of the Act;
- (iii) exercising functions under paragraph 4 of Schedule 1 or paragraph 2 of Schedule 3 to the Act or in accordance with an order made pursuant to section 50 of the Act;
- (k) “regulator” means any regulator mentioned in section 54(1) of the Act; and
- (l) “working day” means a day which is not—
  - (i) Saturday,
  - (ii) Sunday,
  - (iii) Christmas Day,
  - (iv) Good Friday, or
  - (v) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(2) in any part of the United Kingdom.

### **Information**

3. For the purpose of determining which competent persons have jurisdiction to exercise Part 1 functions in relation to a case a competent person may send to any other competent person details of any information he receives that an infringement of—

- (a) the Chapter I prohibition,
- (b) the Chapter II prohibition,
- (c) the prohibition in Article 81(1), or
- (d) the prohibition in Article 82,

may have taken place.

### **Determination of the exercise of prescribing functions**

4.—(1) If a competent person proposes to exercise any of the prescribed functions in relation to a case and he considers that another competent person has or may have concurrent jurisdiction to exercise Part 1 functions in relation to that case, he shall inform that other competent person of his intention to exercise prescribed functions in relation to that case.

(2) Where a competent person has informed another competent person of his intention to exercise prescribed functions in accordance with paragraph (1) in relation to a case all such competent persons (together “the relevant competent persons”) shall agree who shall exercise prescribed functions in relation to that case.

(3) When agreement has been reached in accordance with paragraph (2), the case shall be transferred to the competent person who is to exercise prescribed functions in relation to that case and the OFT shall as soon as practicable inform in writing the relevant competent persons which competent person is to exercise prescribed functions in relation to the case.

### **Dispute**

5.—(1) If the relevant competent persons are not able to reach agreement in accordance with regulation 4(2) within a reasonable time, the OFT shall inform the Secretary of State in writing.

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(2) 1971 c. 80.

(2) Any relevant competent person may make representations in writing to the Secretary of State no later than the date upon which the OFT informs the Secretary of State in accordance with paragraph (1) of the failure to reach agreement.

(3) The Secretary of State shall within 8 working days of receipt of a communication made in accordance with paragraph (1)—

- (a) determine which competent person shall exercise prescribed functions in relation to the case and direct that the case shall be transferred to that competent person; and
- (b) inform in writing all relevant competent persons which competent person is to exercise jurisdiction in relation to the case and the date of transfer of the case.

(4) In making a determination in accordance with paragraph (3)(a) the Secretary of State shall take into consideration any representations made in accordance with paragraph (2).

### **Avoidance of double jeopardy**

6.—(1) Where two or more competent persons may have concurrent jurisdiction in relation to a case, no competent person shall exercise any prescribed functions in relation to that case before agreement has been reached in accordance with regulation 4(2) or a determination has been made in accordance with regulation 5(3)(a) as to which competent person is to exercise prescribed functions in relation to a case.

(2) Subject to regulation 7, once agreement has been reached in accordance with regulation 4(2) or a determination has been made in accordance with regulation 5(3)(a) as to which competent person is to exercise prescribed functions in relation to a case, no other competent person shall exercise any of the prescribed functions in relation to that case.

### **Transfer**

7.—(1) Subject to paragraphs (2) and (4), a competent person who has exercised any Part 1 functions in relation to a case (“the transferor”) may agree with another competent person who has concurrent jurisdiction to exercise Part 1 functions in relation to that case (“the transferee”) to transfer the case to the transferee.

(2) Subject to paragraph (4), if the transferor and the transferee propose to agree a transfer in accordance with paragraph (1), the transferor shall notify in writing the undertaking which is the subject of the exercise of Part 1 functions in that case of the proposed transfer and shall invite the recipient of the notice to make written representations upon the proposal within seven working days of the date of that notice.

(3) Subject to paragraph (4), if a transfer is agreed in accordance with paragraph (1), the transferor shall inform the undertaking which is the subject of the exercise of Part 1 functions in that case in writing that the transferee is to exercise jurisdiction in relation to the case from the date of the transfer and of the reasons for this transfer.

(4) The transferor shall not be under any obligation to notify an undertaking in accordance with paragraph (2) or to inform an undertaking in accordance with paragraph (3) if—

- (a) the transfer takes place before agreement has been reached in accordance with regulation 4(2) or a determination has been made in accordance with regulation 5(3)(a) as to which competent person is to exercise prescribed functions in relation to a case; or
- (b) the transferor has not informed that undertaking that he has exercised Part 1 functions in relation to the case.

### **Use of staff**

**8.**—(1) A competent person who wishes to exercise Part 1 functions in relation to a case (“the appointor”) may appoint an officer of another competent person (“the appointee”) to act as his officer in relation to that case provided that the competent person of which the appointee is an officer gives his written consent to the appointment on or prior to the date upon which the appointment commences.

(2) An appointee shall be an officer of the appointor for the purposes of sections 27 to 29 inclusive of the Act.

(3) Any act or omission of the appointee within the terms of the appointment shall be deemed to be an act or omission of the appointor.

### **Service of notices**

**9.** Any notice to be served on any person under regulation 7 may be served by post, and a letter containing that notice shall be deemed to be properly addressed if it is addressed to that person at its registered office or last known residence or last known place of business in the United Kingdom.

### **Revocation**

**10.** The Competition Act 1998 (Concurrency) Regulations 2000(3) are hereby revoked.

*Gerry Sutcliffe,*  
Parliamentary under Secretary of State for  
Employment Relations, Competition and  
Consumers,  
Department of Trade and Industry

6th April 2004

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations make provision for the Office of Fair Trading (“OFT”) and the regulators who can exercise functions of the OFT under Part 1 of the Competition Act 1998 (c. 41) concurrently with it to co-ordinate the performance of those functions.

Regulation 3 provides for a competent person (meaning the OFT or any of the regulators) to circulate information for the purposes of determining which of their number may exercise Part 1 functions in relation to a case.

Regulation 4 sets out the steps that must be taken before a competent person exercises prescribed functions (as defined in regulation 2) in relation to a case.

Regulation 5 provides the procedure for determining which competent person is to exercise prescribed functions in a particular case when agreement has not been reached on this issue in accordance with regulation 4.

Regulation 6 makes provision for the circumstances in which the exercise of prescribed functions by a competent person in relation to a case precludes the exercise of those functions by another competent person.

Regulation 7 makes provision for a competent person who has exercised Part 1 functions (as defined in regulation 2) in relation to a case to transfer that case to another competent person.

Regulation 8 makes provision for the appointment of an officer of one competent person to act as the officer of another competent person in relation to a case.

Regulation 9 makes provision for the service of notices.

Regulation 10 revokes the Competition Act 1998 (Concurrency) Regulations 2000 (S.I.2000/260).

A Regulatory Impact Assessment has been prepared. A copy can be obtained from the Modernisation Project Team, Consumer and Competition Policy Directorate, Bay 606, 1 Victoria Street, London SW1H 0ET, telephone 020 7215 2174. A copy can also be found at <http://www.dti.gov.uk/ccp/consultations.htm>.