
STATUTORY INSTRUMENTS

2012 No. 710

COMPETITION

**The Competition Act 1998 (Public
Policy Exclusion) Order 2012**

<i>Made</i>	- - - -	<i>6th March 2012</i>
<i>Laid before Parliament</i>		<i>7th March 2012</i>
<i>Coming into force</i>	- -	<i>28th March 2012</i>

The Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the prohibition contained in Chapter I of the Competition Act 1998⁽¹⁾ ought not to apply to any agreement of the description specified in this Order. In exercise of the powers conferred by paragraphs 7(1) and (2) of Schedule 3 to the Competition Act 1998, the Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Competition Act 1998 (Public Policy Exclusion) Order 2012 and shall come into force on 28th March 2012.

Interpretation

2. In this Order—

“fuel” means any of the following substances—

- (a) crude liquid petroleum;
- (b) other petroleum products; and
- (c) any substance, whether solid, liquid or gaseous, not falling within sub-paragraph (a) or (b) above but used as fuel, whether for the propulsion of vehicles or for any other purposes;

“fuel supply disruption” means a significant disruption or a threat of significant disruption to the normal supply of fuel;

“petroleum products” has the meaning given to it by section 21 of the Energy Act 1976⁽²⁾;

“Protocol Party” means any person who is a party to a Qualifying Protocol;

(1) 1998 c.41.
(2) 1976 c.76.

“Qualifying Protocol” has the meaning given in article 3.

Qualifying Protocol

3. For the purposes of this Order, a Qualifying Protocol is an agreement that—
- (a) concerns the distribution of fuel in the event of a fuel supply disruption;
 - (b) is between the Secretary of State and one or more persons;
 - (c) designates any person that is a party to it as a Protocol Party for the purposes of this Order;
 - (d) provides that it can only be activated by a decision of the Secretary of State that there is a fuel supply disruption; and
 - (e) provides that it will only remain activated for the duration of the fuel supply disruption.

Exclusion from the Chapter I prohibition

- 4.—(1) The prohibition contained in Chapter I of the Competition Act 1998 shall not apply to—
- (a) any Qualifying Protocol; or
 - (b) any other agreement or concerted practice between two or more Protocol Parties, or any decision by an association of undertakings that is a Protocol Party to the extent that the agreement, concerted practice or decision—
 - (i) is made, entered into, or taken during the period in which the Qualifying Protocol is activated; and
 - (ii) implements the Qualifying Protocol in respect the fuel supply disruption for which the Qualifying Protocol has been activated;

where the condition in paragraph 2 is met.

(2) The condition referred to in paragraph (1) is that the Qualifying Protocol or other agreement, concerted practice or decision does not have as its object or effect the prevention, restriction or distortion of competition within the United Kingdom, except in relation to a market for fuel affected by the fuel supply disruption for which the Qualifying Protocol has been activated.

Norman Lamb
Parliamentary Under Secretary of State for
Employment Relations, Consumer and Postal
Affairs
Department for Business Innovation and Skills

6th March 2012

EXPLANATORY NOTE

(This note is not part of the Order)

This Order excludes from the Chapter I prohibition in the Competition Act 1998 an agreement between the Secretary of State for Energy and Climate Change and representatives of the petroleum supply industry concerning the supply of fuel in an emergency. It also excludes from the prohibition certain arrangements implementing that agreement. The Chapter I prohibition precludes agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. Where there are exceptional and compelling reasons of public policy for doing so, the Secretary of State may exclude an agreement or an agreement of a particular description from the Chapter I prohibition.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside this instrument at www.legislation.gov.uk.