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STATUTORY INSTRUMENTS

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**2019 No. 93**

**The Competition (Amendment etc.) (EU Exit) Regulations 2019**

**PART 2**

**Amendment of the Competition Act 1998**

**23. After section 60 insert—**

**“60A Certain principles etc to be considered or applied from [F<sup>1</sup>IP completion day]**

(1) This section applies when one of the following persons determines a question arising under this Part in relation to competition within the United Kingdom—

- (a) a court or tribunal;
- (b) the CMA;
- (c) a person acting on behalf of the CMA in connection with a matter arising under this Part.

(2) The person must act (so far as is compatible with the provisions of this Part) with a view to securing that there is no inconsistency between—

- (a) the principles that it applies, and the decision that it reaches, in determining the question, and
- (b) the principles laid down by the Treaty on the Functioning of the European Union and the European Court before [F<sup>1</sup>IP completion day], and any relevant decision made by that Court before [F<sup>1</sup>IP completion day], so far as applicable immediately before [F<sup>1</sup>IP completion day] in determining any corresponding question arising in EU law,

subject to subsections (4) to (7).

(3) The person must, in addition, have regard to any relevant decision or statement of the European Commission made before [F<sup>1</sup>IP completion day] and not withdrawn.

(4) Subsection (2) does not require the person to secure that there is no inconsistency with a principle or decision referred to in subsection (2)(b) so far as the principle or decision is excluded from the law of England and Wales, Scotland and Northern Ireland on or after [F<sup>1</sup>IP completion day].

(5) For the purposes of subsection (4), a principle or decision is to be treated as not excluded from the law of England and Wales, Scotland and Northern Ireland if it is excluded only by virtue of an exclusion or revocation in the Competition (Amendment etc.) (EU Exit) Regulations 2019.

(6) Subsection (2) does not apply so far as the person is bound by a principle laid down by, or a decision of, a court or tribunal in England and Wales, Scotland or Northern Ireland that requires the person to act otherwise.

(7) Subsection (2) does not apply if the person thinks that it is appropriate to act otherwise in the light of one or more of the following—

- (a) differences between the provisions of this Part under consideration and the corresponding provisions of EU law as those provisions of EU law had effect immediately before [F<sup>1</sup>IP completion day];
- (b) differences between markets in the United Kingdom and markets in the European Union;
- (c) developments in forms of economic activity since the time when the principle or decision referred to in subsection (2)(b) was laid down or made;
- (d) generally accepted principles of competition analysis or the generally accepted application of such principles;
- (e) a principle laid down, or decision made, by the European Court on or after [F<sup>1</sup>IP completion day];
- (f) the particular circumstances under consideration.

(8) In subsection (2)(b), the reference to principles laid down before [F<sup>1</sup>IP completion day] is a reference to such principles as they have effect in EU law immediately before [F<sup>1</sup>IP completion day], disregarding the effect of principles laid down, and decisions made, by the European Court on or after [F<sup>1</sup>IP completion day].

(9) In this section, references to a decision of the European Court or the European Commission include a decision as to—

- (a) the interpretation of a provision of EU law;
- (b) the civil liability of an undertaking for harm caused by its infringement of EU law.”.

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**Textual Amendments**

- F1** Words in reg. 23 substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), 5
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**Commencement Information**

- II** Reg. 23 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Competition (Amendment etc.) (EU Exit) Regulations 2019, Section 23.