
STATUTORY INSTRUMENTS

2020 No. 1343

The Competition (Amendment etc.) (EU Exit) Regulations 2020

PART 7

Amendment of Part 7 of the 2019 Regulations: saving and transitional provision

CHAPTER 2

Enterprise Act 2002 and other merger control legislation

41. Part 7 of Schedule 4 to the 2019 Regulations is amended as follows.
42. In the heading of Part 7, after “2002” insert “and other merger control legislation”.
43. In paragraph 18, in the definition of “EC Merger Regulation”, for “immediately before exit day” substitute “from time to time”.
44. Omit paragraph 19.
45. After paragraph 19 insert—

“EU merger decisions annulled in full or in part

19A.—(1) This paragraph applies if, on or after IP completion day, a decision by the European Commission in relation to a continued competence concentration is annulled in full or in part by the European Court and European Commission or the European Court makes a binding decision that the European Commission is not competent—

- (a) to re-examine the concentration concerned under Article 10(5) of the EC Merger Regulation; or
- (b) to consider as part of such a re-examination any effects of the concentration concerned on competition within a market or markets in the United Kingdom.

(2) Nothing in the EU withdrawal agreement is to be taken as preventing the following in relation to the concentration concerned—

- (a) a reference being made under section 22 or 33 of the 2002 Act;
- (b) an intervention notice being given under section 42 of the 2002 Act;
- (c) a reference being made under section 45 of the 2002 Act.

(3) The European Commission and the European Court are to be treated as having made a binding decision for the purposes of sub-paragraph (1)(a) or (b) when—

- (a) the decision or other document containing a decision to that effect or from which a decision to that effect may reasonably be inferred is published; and
- (b) the decision becomes final.

(4) A decision of the European Commission becomes final—

- (a) when the time for appealing against it in the European Court expires without an appeal having been brought; or

- (b) where an appeal has been brought against the decision, when—
 - (i) the appeal and any further appeal in the European Court in relation to the decision has been decided or has otherwise ended; and
 - (ii) the time for appealing against the result of the appeal or further appeal in the European Court has expired without another appeal having been brought.
- (5) A decision by the European Court becomes final—
 - (a) when the time for appealing against it expires without an appeal having been brought; or
 - (b) where an appeal has been brought against the decision, when the appeal in relation to the decision has been decided or has otherwise ended.
- (6) On and after IP completion day, despite their repeal by these Regulations, subsections (3) to (5) of section 122 of the 2002 Act continue to have effect in relation to the concentration concerned except that the condition mentioned in section 122(4) is to be treated as being satisfied during the period starting on IP completion day and ending on the day the binding decision referred to in sub-paragraph (1)(a) or (b) is made by the European Commission or the European Court (as the case may be).
- (7) In this paragraph, “continued competence concentration” means a concentration—
 - (a) in relation to which the EU merger decision was taken before IP completion day; or
 - (b) in relation to which the European Commission has continued competence as regards the United Kingdom on and after IP completion day in accordance with Article 92 of the EU withdrawal agreement.”.

Article 22 cases referred to European Commission before IP completion day

- 46.** In paragraph 20(1) and (4) and in the heading before that paragraph, for “exit day” substitute “IP completion day”.
- 47.** Omit paragraph 21.
- 48.** In paragraph 22, in sub-paragraphs (1) and (4), for “exit day” substitute “IP completion day”.
- 49.** Omit paragraph 23.

Cases referred by the European Commission to the CMA

- 50.**—(1) Paragraph 24 is amended as follows.
 - (2) In sub-paragraph (1)—
 - (a) for the words from “in a case” to “exit day” substitute “if”;
 - (b) in paragraph (b), at the beginning, insert “in a case in which the decision to refer was taken, or is deemed to have been taken, before IP completion day,”.
 - (3) In the heading, omit “before exit day”.

Intervention to protect legitimate interests: no European intervention notice before IP completion day

- 51.**—(1) Paragraph 25 is amended as follows.
 - (2) In sub-paragraph (1)—
 - (a) for “exit day” substitute “IP completion day”;

- (b) in paragraph (c), for “subsection (2) of that section” substitute “section 67(2) of the 2002 Act”.
 - (3) In sub-paragraph (2)—
 - (a) for each reference to “exit day” substitute “IP completion day”;
 - (b) for “67(1)” substitute “67(1)(a)(ii), (b) and (c)”.
 - (4) In the heading, for “exit day” substitute “IP completion day”.
- 52.** After paragraph 25 insert—

- “**25A.**—(1) This paragraph applies in a case where immediately before IP completion day—
- (a) a concentration is being examined by the European Commission but the EU merger decision has not been taken in relation to the concentration, and
 - (b) the Secretary of State has not made a decision to give an intervention notice under section 67(2) of the 2002 Act in relation to the concentration concerned.
- (2) The old legitimate interests law continues to have effect on and after IP completion day in relation to the case concerned except that—
- (a) the references to “EU law” in sections 67(1)(b) and 68(2)(c) of the 2002 Act are to be read as references to “relevant separation agreement law” within the meaning of section 7C of the European Union (Withdrawal Agreement) Act 2020(1); and
 - (b) references to the EC Merger Regulation in sections 67 and 68 of the 2002 Act have the meaning given by paragraph 18.
- (3) In this paragraph—
- (a) “the old legitimate interests law” has the same meaning as in paragraph 25; and
 - (b) a concentration is being examined by the European Commission if proceedings under the EC Merger Regulation in relation to the concentration have been initiated for the purposes of Article 92 of the EU withdrawal agreement.”.

Intervention to protect legitimate interests: European intervention notice before IP completion day

- 53.**—(1) Paragraph 26 is amended as follows.
- (2) In sub-paragraph (1), for “exit day” substitute “IP completion day”.
 - (3) In sub-paragraph (2), for the words from “exit day” to the end substitute “IP completion day in connection with the matter to which the notice relates”.
 - (4) In the heading, for “exit day” substitute “IP completion day”.
- 54.**—(1) Paragraph 27 is amended as follows.
- (2) In sub-paragraph (1)—
 - (a) for “exit day” substitute “IP completion day”;
 - (b) at the end of paragraph (a), insert “and”;
 - (c) omit paragraph (c) and the “and” before it.
 - (3) In sub-paragraph (2)—
 - (a) for “exit day” substitute “IP completion day”;

- (b) at the end, insert—
- “except that in section 68(2) of the 2002 Act—
- (a) the reference to “EU law” includes a reference to “relevant separation agreement law” within the meaning of section 7C of the European Union (Withdrawal Agreement) Act 2020; and
 - (b) the reference to the EC Merger Regulation has the meaning given by paragraph 18.

55.—(1) Paragraph 28 is amended as follows.

- (2) In sub-paragraph (1)—
- (a) for “exit day” substitute “IP completion day”;
 - (b) for paragraph (c) substitute—
 - “(c) proceedings under the EC Merger Regulation in relation to the concentration concerned have not been initiated for the purposes of Article 92 of the EU withdrawal agreement.”.
- (3) In sub-paragraph (2)—
- (a) for “exit day” substitute “IP completion day”;
 - (b) in paragraph (b) omit “subject to paragraphs 29 to 33”.

56. Omit paragraphs 29 to 33.

General savings

57. In paragraphs 34 and 35, for each reference to “exit day” substitute “IP completion day”.

58. After paragraph 35 insert—

“**35A.**—(1) Section 240 of the 2002 Act(2) continues to have effect in respect of continued competence cases despite its repeal by regulation 59.

(2) In any case where section 240 of the 2002 Act continues to have effect by virtue of this paragraph, the reference in that section to an EU obligation is to be treated as a reference to an obligation which arises by virtue of relevant separation agreement law.

(3) In this paragraph—

“continued competence cases” means proceedings for the application of Article 101 or 102 TFEU conducted by the European Commission under Regulation 1/2003 and proceedings in connection with the control of concentrations between undertakings governed by Regulation 139/2004, for which the European Commission has competence on and after IP completion day by virtue of Part 3 of the EU withdrawal agreement;

“Regulation 1/2003” means Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, as it has effect from time to time for the purposes of relevant separation agreement law;

“Regulation 139/2004” means Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings as it has effect from time to time for the purposes of relevant separation agreement law.

(2) As amended by [S.I. 2011/1043](#).

EEC Merger Control (Distinct Market Investigations) Regulations 1990

35B.—(1) This paragraph applies where, on or after IP completion day, the European Commission has requested information under the second sentence of Article 19(2) of the EC Merger Regulation in relation to a case for which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) The EEC Merger Control (Distinct Market Investigations) Regulations 1990⁽³⁾ continue to have effect on and after IP completion day in relation to the case despite their repeal by these Regulations.”.

(3) [S.I. 1990/1715](#), as amended by [S.I. 2004/1079](#).