

SCHEDULE 2

ENFORCEMENT ACTION IN EUROPEAN INTERVENTION NOTICE CASES

Statutory restrictions following reference under article 5

- 8.**—(1) Sub-paragraph (2) applies where—
- (a) a reference has been made under article 5, and
 - (b) no undertakings under paragraph 1 are in force in relation to the European relevant merger situation concerned and no orders under paragraph 2 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Secretary of State, directly or indirectly acquire during the relevant period an interest in shares in a company if any enterprise to which the reference relates is carried on by or under the control of that company.
- (3) The consent of the Secretary of State under sub-paragraph (2)—
- (a) may be general or specific;
 - (b) may be revoked by the Secretary of State; and
 - (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (4) Paragraph (c) of sub-paragraph (3) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.
- (5) Sub-paragraph (2) shall apply to a person’s conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;
 - (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
 - (c) a person carrying on business in the United Kingdom.
- (6) In this paragraph—
- “company” includes any body corporate;
- “relevant period” means the period beginning with the publication of the decision of the Secretary of State to make the reference concerned and ending when the reference is finally determined;
- “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
 - (b) any subsidiary of any person falling within paragraph (a); or
 - (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated; and
- “share” means share in the capital of a company, and includes stock.
- (7) For the purposes of the definition of “relevant period” in sub-paragraph (6), a reference under article 5 is finally determined if—
- (a) the Commission cancels the reference under article 7(1) or article 11(1);
 - (b) the time within which the Commission is to prepare a report under article 8 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;

- (c) the time within which the Secretary of State is to make and publish a decision under article 12(2) has expired and no such decision has been made and published;
 - (d) the Secretary of State decides under paragraph (2) of article 12 otherwise than as mentioned in paragraph (6) of that article;
 - (e) the Secretary of State decides under paragraph (2) of article 12 as mentioned in paragraph (6) of that article but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
 - (f) the Secretary of State decides under paragraph (2) of article 12 as mentioned in paragraph (6) of that article and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (8) For the purposes of the definition of “relevant period” in sub-paragraph (6) above, the time when a reference under article 5 is finally determined is—
- (a) in a case falling within sub-paragraph (7)(a) or (d), the making of the decision concerned;
 - (b) in a case falling within sub-paragraph (7)(b) or (c), the expiry of the time concerned;
 - (c) in a case falling within sub-paragraph (7)(e), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and
 - (d) in a case falling within sub-paragraph (7)(f) the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (9) Section 79 of the Act shall apply for the purposes of paragraph 7 and this paragraph in relation to a reference under article 5 as it applies for the purposes of sections 77 and 78 in relation to a reference under section 22 or 33 of the Act.
- (10) In its application by virtue of sub-paragraph (9) section 79 shall have effect as if—
- (a) subsections (1) and (2) were omitted; and
 - (b) for the reference in subsection (4) to the OFT there were substituted a reference to the Secretary of State.