
Changes to legislation: Competition Act 1998, Part 3 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

[^{F1}SCHEDULE 8A

FURTHER PROVISION ABOUT CLAIMS IN RESPECT OF LOSS OR DAMAGE BEFORE A COURT OR THE TRIBUNAL

Textual Amendments

- F1** Sch. 8A inserted (9.3.2017) by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017 \(S.I. 2017/385\)](#), reg. 1(2), [Sch. 1 para. 4](#) (with Sch. 1 para. 5)

PART 3

SMALL AND MEDIUM-SIZED ENTERPRISES

Liability of small and medium-sized enterprises

12. (1) Sub-paragraph (3) applies where—
- (a) an undertaking participated in an infringement of competition law with one or more other undertakings,
 - (b) throughout the period of the infringement, the undertaking's share of the relevant market (or, if there was more than one, each relevant market) was less than 5%,
 - (c) but for this paragraph, the undertaking's liability to pay damages in respect of the infringement (whatever the legal basis of the liability) would irretrievably jeopardise its economic viability and cause its assets to lose all their value, and
 - (d) the undertaking is a small or medium-sized enterprise.
- (2) Sub-paragraph (3) does not apply where—
- (a) the undertaking led the infringement,
 - (b) the undertaking coerced one or more of the other undertakings to participate in the infringement, or
 - (c) the undertaking has previously been found to have infringed competition law.
- (3) The undertaking is not liable (either alone or jointly) to pay damages in respect of loss or damage suffered by a person as a result of the infringement of competition law (whatever the legal basis of the liability) except where—
- (a) the person acquired a product or service that was the object of the infringement directly or indirectly from the undertaking, or

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- (b) the person acquired a product or service containing or derived from a product or service that was the object of the infringement indirectly from the undertaking.
- (4) The reference in sub-paragraph (1)(c) to the effect of the undertaking’s liability to pay damages is to its effect taking account of the undertaking’s other liabilities.
- (5) In this paragraph “small or medium-sized enterprise” means a small or medium-sized enterprise as defined in the Annex to Commission Recommendation (EC) No. 2003/361 of 6 May 2003 [^{F2}(“the SME Annex”), subject to sub-paragraph (6)].]
- [^{F3}(6) For the purposes of this paragraph, the SME Annex has effect as if—
- (a) in Article 2(1), for “EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million” there were substituted “ £44,000,000 and/or an annual balance sheet total not exceeding £38,000,000 ”;
 - (b) in Article 2(2), for “EUR 10 million” there were substituted “ £8,800,000 ”;
 - (c) in Article 2(3), for “EUR 2 million” there were substituted “ £1,750,000 ”;
 - (d) in Article 3(2)(a), for “EUR 1 250 000” there were substituted “ £1,100,000 ”;
 - (e) in Article 3(2)(d), for “EUR 10 million” there were substituted “ £8,800,000 ”;
 - (f) in Article 3(5), for “by national or Community rules” there were substituted “ under the law of the United Kingdom (or any part of it) ”;
 - (g) in Article 5(b), for “national law” there were substituted “ the law of the United Kingdom (or any part of it) ”.]

Textual Amendments

- F2** Words in Sch. 8A para. 12(5) inserted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **30(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Sch. 8A para. 12(6) inserted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), regs. 1(1), **30(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket Amendment words substituted by [2005 c. 4 Sch. 11 para. 5](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 31G-31L and cross-heading inserted by S.I. 2019/93, reg. 8A (as inserted) by [S.I. 2019/1245 reg. 3](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 46(3)(ha)(hb) inserted by S.I. 2019/93, reg. 14(d) (as inserted) by [S.I. 2019/1245 reg. 5](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 47(1)(ca) inserted by S.I. 2019/93, reg. 15(b) (as substituted) by [S.I. 2019/1245 reg. 6](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 60A(10) inserted by [2023 c. 28 s. 6\(10\)](#)
- Sch. 6A para. 1A inserted by S.I. 2019/93, reg. 29A(2) (as inserted) by [S.I. 2019/1245 reg. 7](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- Sch. 6A Pt. 3 inserted by S.I. 2019/93, reg. 29A(4) (as inserted) by [S.I. 2019/1245 reg. 7](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)