



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 9A

#### RULES AND GUIDANCE

### [<sup>F1</sup>CHAPTER 4

#### COMPETITION SCRUTINY

##### Textual Amendments

- F1** Pt. 9A substituted for ss. 138-164 (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\)](#), ss. **24(1)**, 122(3) (with [Sch. 20](#)); S.I. 2013/113, art. 2(1)(c), [Sch. Pt. 3](#); S.I. 2013/423, art. 3, [Sch.](#)

##### Modifications etc. (not altering text)

- C1** Pt. 9A Ch. 4 applied (1.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), ss. **107(1)**, 148(5); S.I. 2014/377, art. 2(1)(a), [Sch. Pt. 1](#)

## 140A Interpretation

(1) In this Chapter—

[<sup>F2</sup>“the CMA” means the Competition and Markets Authority.]

“market in the United Kingdom” includes—

- (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and
- (b) any market which operates only in a part of the United Kingdom;

[<sup>F3</sup> ...

“practices”, in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;

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- “regulating provisions” means—
- (a) in relation to the FCA, any—
    - (i) rules of the FCA;
    - (ii) general guidance (as defined by section 139B(5) [<sup>F4</sup>or 333P(9)]);
    - (iii) <sup>F5</sup> ...
    - (iv) <sup>F6</sup> ...
    - (v) [<sup>F7</sup>standards set under section 333H;
    - (vi) statement issued by the FCA under 333K;]
  - (b) in relation to the PRA, any—
    - (i) rules of the PRA;
    - (ii) <sup>F8</sup> ...
    - (iii) <sup>F8</sup> ...

<sup>F9</sup>(2) .....

- (3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be read as a reference to—
  - (a) the structure of the market concerned or any aspect of that structure,
  - (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or
  - (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
- (4) In subsection (3) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

#### Textual Amendments

- F2** Words in s. 140A(1) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 121\(2\)\(ii\)](#) (with art. 3)
- F3** Words in s. 140A(1) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 121\(2\)\(i\)](#) (with art. 3)
- F4** Words in s. 140A(1) inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 10\(a\)](#) (with s. 87)
- F5** Words in s. 140A omitted (7.3.2016) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 3 para. 10\(a\)\(i\)](#); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
- F6** Words in s. 140A(1) omitted (3.7.2016) by virtue of [The Financial Services and Markets Act 2000 \(Market Abuse\) Regulations 2016 \(S.I. 2016/680\)](#), regs. 1, [10\(7\)](#)
- F7** Words in s. 140A(1) inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 10\(b\)](#) (with s. 87)
- F8** Words in s. 140A omitted (7.3.2016) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 3 para. 10\(b\)](#); S.I. 2015/490, art. 2(1)(b) (with savings and transitional provisions in S.I. 2015/492 (as amended by S.I. 2015/1660))
- F9** S. 140A(2) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 121\(3\)](#) (with art. 3)

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## 140B Advice about effect of regulating provision or practice

(1) In this Chapter, any reference to the giving of “section 140B advice” to a regulator is to be read in accordance with this section.

[<sup>F10</sup>(2) The CMA gives “section 140B advice” to a regulator if—

- (a) it gives advice to the regulator under section 7 of the Enterprise Act 2002 (provision of competition advice to Ministers etc) and the advice states that in the opinion of the CMA one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), or might be expected to do so in the future;
- (b) a report published by it under section 136 of the Enterprise Act 2002 (investigations and reports on market investigation reference) contains—
  - (i) a decision that one or more of the things mentioned in subsection (4) may cause, or contribute to, the effect mentioned in subsection (5), and
  - (ii) a recommendation that any action should be taken by that regulator.]

<sup>F11</sup>(3) .....

(4) Those things are—

- (a) a regulating provision or practice of the regulator,
- (b) two or more regulating provisions or practices (of that regulator or of both regulators) taken together,
- (c) a particular combination of regulating provision or practices (of that regulator or of both regulators), or
- (d) a feature, or combination of features, of a [<sup>F12</sup>one or more markets] in the United Kingdom that could be dealt with by regulating provision or practices (of that regulator or of both regulators).

(5) That effect is the prevention, restriction or distortion of competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

### Textual Amendments

- F10** S. 140B(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 122(1)** (with art. 3)
- F11** S. 140B(3) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 122(2)** (with art. 3)
- F12** Words in s. 140B(4)(d) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 122(3)** (with art. 3)

## 140C Consultation with regulator

Before giving section 140B advice, [<sup>F13</sup>the CMA] must consult the regulator to which the advice is to be given.

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### Textual Amendments

- F13** Words in s. 140C substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 123](#) (with art. 3)

## 140D Investigation powers of <sup>F14</sup>CMA]

[ Where the <sup>F16</sup>CMA] is deciding whether to exercise its power under section 7 of the <sup>F15</sup>(1) Enterprise Act 2002 to give advice which, if given, would be section 140B advice, section 174 of that Act has effect as if—

<sup>F17</sup>(a) for subsection (1) there were substituted—

“(1) For the purposes of this section, a permitted purpose is assisting the CMA in deciding whether to exercise its power under section 7 to give advice which for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 would be section 140B advice.”, and

(b) subsection (9A) were omitted.]

[ Where the CMA has exercised any of its powers under section 174 of the Enterprise <sup>F18</sup>(2) Act 2002, as applied by subsection (1), section 174B of that Act has effect as if, after subsection (9), there were inserted—

“(10) Where the section 174 power is exercised for the purpose of assisting the CMA in deciding whether to exercise its power under section 7 to give advice which for the purposes of Chapter 4 of Part 9A of the Financial Services and Markets Act 2000 would be section 140B advice, the relevant day is the day when the CMA publishes that advice.”]

### Textual Amendments

- F14** Word in s. 140D heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 124\(5\)](#) (with art. 3, Sch. 2 para. 4)
- F15** S. 140D renumbered as s. 140D(1) (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 124\(2\)](#) (with art. 3, Sch. 2 para. 4)
- F16** Word in s. 140D(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 124\(3\)\(a\)](#) (with art. 3, Sch. 2 para. 4)
- F17** S. 140D(1)(a)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 124\(3\)\(b\)](#) (with art. 3, Sch. 2 para. 4)
- F18** S. 140D(2) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 124\(4\)](#) (with art. 3, Sch. 2 para. 4)

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### [<sup>F19</sup>140E] **Publication by CMA of section 140B advice**

Where the giving of advice under section 7 of the Enterprise Act 2002 to either regulator constitutes the giving of section 140B advice, the CMA must publish that advice in such manner as it thinks fit.]

#### **Textual Amendments**

**F19** S. 140E substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 125** (with art. 3)

### **140F Duty of [<sup>F20</sup>CMA] to send report to regulator**

- (1) Where the publication of a report of the [<sup>F21</sup>CMA] under section 142 of the Enterprise Act 2002 constitutes the giving of section 140B advice to either regulator, the [<sup>F22</sup>CMA] must give a copy of the report to that regulator.
- (2) The day on which the copy is given is the day on which the regulator is to be taken to receive the section 140B advice.

#### **Textual Amendments**

- F20** Word in s. 140F heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 126(3)** (with art. 3)
- F21** Word in s. 140F(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 126(2)(a)** (with art. 3)
- F22** Word in s. 140F(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 126(2)(b)** (with art. 3)

### **140G Duty of regulator to publish response**

- (1) A regulator must, within 90 days after the day on which it receives section 140B advice, publish a response stating how it proposes to deal with the advice and in particular—
  - (a) whether it has decided to take any action, or to take no action, in response to the advice,
  - (b) if it has decided to take action, what action it proposes to take, and
  - (c) its reasons for its proposals.
- (2) Publication is to be in such manner as the regulator thinks fit.

### **140H Role of the Treasury**

- (1) This section applies where—
  - (a) [<sup>F23</sup>the CMA] has given section 140B advice and the regulator has published a response under section 140G, and

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- (b) the [F24CMA] remains of the opinion that one or more of the things mentioned in section 140B(4) may cause or contribute to, the effect mentioned in section 140B(5).
- (2) The [F25CMA] may refer the section 140B advice to the Treasury by sending the Treasury—
- (a) a copy of the section 140B advice and of the response, and
  - (b) a request to consider the advice and the response.
- (3) In referring the section 140B advice, the [F25CMA] may give advice to the Treasury as to what action, if any, ought to be taken by the regulator.
- (4) If section 140B advice is referred to them, the Treasury may give a direction to the regulator to which the advice was given requiring the regulator to take such action as may be specified in the direction.
- (5) In considering whether to give a direction and, if so, what action to specify, the Treasury must have regard to—
- (a) any advice the [F26CMA] has given under subsection (3),
  - (b) any action which the section 140B advice suggests that the regulator should take, and
  - (c) the response of the regulator to the section 140B advice.
- (6) The direction may not require the regulator to do anything that it has no power to do, but the existence of the direction is relevant to the exercise of any discretion conferred on the regulator.
- (7) Before giving a direction under this section, the Treasury must consult the regulator to which it is to be given.
- (8) If the Treasury give a direction under this section they must—
- (a) publish in such manner as they think fit a statement giving details of the direction and of their reasons for giving it, and
  - (b) lay a copy of the statement before Parliament.]

#### Textual Amendments

- F23** Words in s. 140H(1)(a) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 127\(2\)\(a\)](#) (with art. 3)
- F24** Word in s. 140H(1)(b) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 127\(2\)\(b\)](#) (with art. 3)
- F25** Word in s. 140H(2)(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 127\(3\)](#) (with art. 3)
- F26** Word in s. 140H(5) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 127\(3\)](#) (with art. 3)

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