

SCHEDULES

SCHEDULE 7

MERGERS: INTERIM MEASURES

Interim measures: public interest and special interest cases

- 4 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.
- (2) Omit paragraph 1 (interim undertakings).
- (3) In paragraph 2 (interim orders), after sub-paragraph (2) insert—
- “(2A) Sub-paragraph (2B) applies where—
- (a) an intervention notice or special intervention notice is in force, and
- (b) the Secretary of State or the CMA has reasonable grounds for suspecting that pre-emptive action has or may have been taken.
- (2B) The Secretary of State or (as the case may be) the CMA may by order, for the purpose of restoring the position to what it would have been had the pre-emptive action not been taken or otherwise for the purpose of mitigating its effects—
- (a) do anything mentioned in sub-paragraph (2)(b) to (d);
- (b) impose such other obligations, prohibitions or restrictions as it considers appropriate for that purpose.”
- (4) In that paragraph, after sub-paragraph (2B) insert—
- “(2C) A person may, with the consent of the Secretary of State or (as the case may be) the CMA, take action or action of a particular description where the action would otherwise constitute a contravention of an order under this paragraph by the Secretary of State or (as the case may be) the CMA.”
- (5) In that paragraph, in sub-paragraph (4)—
- (a) omit “or the OFT”,
- (b) for “by the OFT” substitute “by the CMA”, and
- (c) omit “or (as the case may be) the OFT”.
- (6) In that paragraph, in sub-paragraph (8), omit “1 or”.
- (7) In that paragraph, in sub-paragraph (10), for the words from “the order” to the end of the sub-paragraph substitute “—
- (a) the Secretary of State or (as the case may be) the CMA has reasonable grounds for suspecting that it is or may be the case that two or more enterprises have ceased to be distinct or that arrangements are in progress or in contemplation which, if carried

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into effect, will result in two or more enterprises ceasing to be distinct; or

- (b) the order relates to a special merger situation which has been, or may have been, created.”

(8) In that paragraph, after sub-paragraph (11) insert—

“(12) In this paragraph “pre-emptive action” means action which might prejudice the reference or possible reference concerned under section 45 or (as the case may be) 62 or impede the taking of any action under this Part which may be justified by the Secretary of State’s decisions on the reference.”