

## SCHEDULE

Article 2

### APPLICABLE TURNOVER

#### Interpretation

**1.** In this Schedule:

“aid” means aid within the meaning of Article 87 of the EC Treaty;

“branch” means a place of business in the United Kingdom which forms a legally dependent part of a credit institution or financial institution and which conducts directly all or some of the operations inherent in the business of the undertaking and any number of branches set up in the United Kingdom shall for the purposes of this Order be regarded as a single branch;

“credit institution” means a credit institution for the purposes of Article 1 of Directive [2000/12/EC](#) of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>(1)</sup>;

“financial institution” means a financial institution for the purposes of Article 1 of Directive [2000/12/EC](#) of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions;

“insurance undertaking” means an insurance undertaking carrying on the business of direct insurance of a class set out in the Annex to Council Directive [\(EEC\) 73/239](#) the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance<sup>(2)</sup> or in Article 2 of Directive [2002/83/EC](#) of the European Parliament and of the Council of 5th November 2002 concerning life assurance<sup>(3)</sup>; and

terms used in this Schedule in respect of the determination of the applicable turnover of credit institutions, financial institutions and insurance undertakings shall (except where the contrary intention appears) have the same meaning as in the relevant Directive.

**2.** Save in paragraphs 4 to 9, the provisions of this Schedule shall be interpreted in accordance with accounting principles and practices that are generally accepted in the United Kingdom.

#### General

**3.** The applicable turnover of an enterprise, other than an enterprise which is a credit institution, financial institution or insurance undertaking shall be limited to the amounts derived from the sale of products and the provision of services falling within the ordinary activities of the enterprise to businesses or consumers in the United Kingdom after deduction of sales rebates, value added tax and other taxes directly related to turnover.

**4.** Subject to paragraphs 8 and 9, where an enterprise consists of two or more enterprises which are under common ownership or control the applicable turnover shall be calculated by adding together the respective applicable turnover of each of the enterprises under common ownership or control.

**5.** For the purposes of paragraphs 4 and 7 to 9, enterprises shall in particular be treated as being under common control if they are—

- (a) enterprises of interconnected bodies corporate;
- (b) enterprises carried on by two or more bodies corporate of which one and the same person or group of persons has control; or

<sup>(1)</sup> OJNo. L126, 26.05.00, p. 1.

<sup>(2)</sup> OJ No. L228, 16.8.73, p. 3.

<sup>(3)</sup> OJ No. L345, 19.12.02, p. 1.

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(c) an enterprise carried on by a body corporate and an enterprise carried on by a person or group of persons having control of that body corporate.

6. A person or group of persons able, directly or indirectly, to control or materially influence the policy of a body corporate, or the policy of any person in carrying on an enterprise but without having a controlling interest in that body corporate or in that enterprise, may, for the purposes of paragraph 4, be treated by the decision-making authority as having control of it.

7. Section 127 of the Act shall apply to the determination of whether enterprises are under common control for the purposes of paragraphs 5 and 6 as it applies, for the purposes specified in section 127, to section 26 of the Act.

8. Subject to paragraph 9, applicable turnover shall not include amounts derived from the sale of products or the provision of services between enterprises under common ownership or control.

9. Where, as a result of the merger situation, one or more enterprises ceases or will cease to be under common ownership or control with the enterprise being taken over, the decision-making authority may treat amounts derived from the sale of products or the provision of services between the enterprise being taken over and any enterprises ceasing to be under common ownership or control with that enterprise as applicable turnover and if such sale of products or provision of services has not resulted in any turnover or the decision-making authority considers that the turnover attributed to them does not reflect open market value, the decision-making authority may attribute such value to them as it considers appropriate and include them in the calculation of applicable turnover.

10. Where an enterprise has applicable turnover part of which is attributable to a credit institution, financial institution or insurance undertaking, that part or those parts of the applicable turnover shall be calculated in accordance with paragraphs 3, 11 and 12.

### **Credit institutions and financial institutions**

11. The applicable turnover of an enterprise which is a credit institution or financial institution shall be limited to the sum of the following income as defined in Council Directive (EEC) 86/635(4) received by the branch or division of that institution established in the United Kingdom after deduction of value added tax and other taxes directly related to those items:

- (a) interest income and similar income;
- (b) income from securities:
  - income from shares and other variable yield securities;
  - income from participating interests;
  - income from shares in affiliated undertakings;
- (c) commissions receivable;
- (d) net profit on financial operations;
- (e) other operating income.

### **Insurance undertakings**

12. The applicable turnover of an enterprise which is an insurance undertaking shall be limited to the value of gross premiums received from residents of the United Kingdom which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the undertaking, including outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total volume of premiums.

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(4) OJ No. L372, 31.12.86, p. 1.

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### **Aid granted to businesses**

**13.** Any aid granted by a public body to a business which relates to one of the ordinary activities of the business shall be included in the calculation of turnover if the business is itself the recipient of the aid and if the aid is directly linked to the sale of products or the provision of services by the business and is therefore reflected in the price.