

SCHEDULE 1

Amendments to the Competition Act 1998

21.—(1) Section 35 (interim measures) is amended as follows.

(2) For subsection (1) there is substituted—

“(1) Subject to subsections (8) and (9), this section applies if the OFT has begun an investigation under section 25 and not completed it (but only applies so long as the OFT has power under section 25 to conduct that investigation).”.

(3) For subsection (5) there is substituted—

“(5) A direction given under this section may if the circumstances permit be replaced by—

- (a) a direction under section 32 or (as appropriate) section 33, or
- (b) commitments accepted under section 31A,

but, subject to that, has effect while this section applies.”.

(4) In subsection (6), for “case of a suspected infringement of the Chapter I prohibition” there is substituted “cases mentioned in section 25(2), (3), (6) and (7)”.

(5) In subsection (7), for “case of a suspected infringement of the Chapter II prohibition” there is substituted “cases mentioned in section 25(4) and (5)”.

(6) After subsection (7) there is inserted—

“(8) In the case of an investigation conducted by virtue of section 25(2) or (6), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is exempt from the Chapter I prohibition as a result of section 9(1); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade within the United Kingdom, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the United Kingdom

(9) In the case of an investigation conducted by virtue of section 25(3) or (7), this section does not apply if a person has produced evidence to the OFT in connection with the investigation that satisfies it on the balance of probabilities that, in the event of it reaching the basic infringement conclusion, it would also reach the conclusion that the suspected agreement is an agreement to which the prohibition in Article 81(1) is inapplicable because the agreement satisfies the conditions in Article 81(3); and in this subsection “the basic infringement conclusion” is the conclusion that there is an agreement which—

- (a) may affect trade between Member States, and
- (b) has as its object or effect the prevention, restriction or distortion of competition within the Community.”.

Changes to legislation:

There are currently no known outstanding effects for the The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, Paragraph 21.