

## SCHEDULE 1

Regulation 4 Section 31A

### Amendments to the Competition Act 1998

1. In the long title of the 1998 Act, for “Article 85 or 86” there is substituted “ Article 81 or 82 ”.
2. Section 4 (individual exemptions) shall cease to have effect.
3. Section 5 (cancellation etc. of individual exemptions) shall cease to have effect.
- 4.—(1) Section 6 (block exemptions) is amended as follows.
  - (2) In subsection (1), for the words “agreements to which section 9 applies” there is substituted “ exempt agreements ”.
  - (3) In subsection (6)(c), for the words “one to which section 9 applies” there is substituted “ an exempt agreement ”.
  - (4) For subsection (8) there is substituted—

“(8) In this section—

“exempt agreement” means an agreement which is exempt from the Chapter I prohibition as a result of section 9; and  
“specified” means specified in a block exemption order.”.
5. Section 7 (block exemptions: opposition) shall cease to have effect.
- 6.—(1) Section 9 (the criteria for individual and block exemptions) is renumbered as subsection (1) of that section.
  - (2) In that provision, for the words “This section applies to any agreement which” there is substituted “ An agreement is exempt from the Chapter I prohibition if it ”.
  - (3) In paragraph (a) of that provision, for the word “but” there is substituted “ and ”.
  - (4) After that provision there is inserted—

“(2) In any proceedings in which it is alleged that the Chapter I prohibition is being or has been infringed by an agreement, any undertaking or association of undertakings claiming the benefit of subsection (1) shall bear the burden of proving that the conditions of that subsection are satisfied.”.
  - (5) In the sidenote to section 9, for the words “The criteria for individual and block exemptions” there is substituted “ Exempt agreements ”.
- 7.—(1) Section 10 (parallel exemptions) is amended as follows.
  - (2) In subsection (1), for paragraphs (b) and (c) there is substituted—

“or

(b) because of a decision of the Commission under Article 10 of the EC Competition Regulation.”.
  - (3) In subsection (9), after the word “Regulation” there is inserted “ other than the EC Competition Regulation ”.
  - (4) In subsection (10), in the definition of “the Community prohibition” for paragraph (a) there is substituted “ (a) Article 81(1); ”.
- 8.—(1) Section 11 (exemption for certain other agreements) is amended as follows.
  - (2) In subsection (1)—

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- (a) for the words “Article 88” there is substituted “ Article 84 ”;
  - (b) for the words “Article 85” there is substituted “ Article 81(1) ”.
9. Sections 12 to 16 and 20 to 24 (which concern notifications) shall cease to have effect.
10. For Section 25 (OFT’s power to investigate) there is substituted—

**“ 25 Power of OFT to investigate**

- (1) In any of the following cases, the OFT may conduct an investigation.
- (2) The first case is where there are reasonable grounds for suspecting 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.
- (3) The second case is where there are reasonable grounds for suspecting 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.
- (4) The third case is where there are reasonable grounds for suspecting that the Chapter II prohibition has been infringed.
- (5) The fourth case is where there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed.
- (6) The fifth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade within the United Kingdom; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within the United Kingdom.
- (7) The sixth case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—
  - (a) may have affected trade between Member States; and
  - (b) had as its object or effect the prevention, restriction or distortion of competition within the Community.
- (8) Subsection (2) does not permit an investigation to be conducted in relation to an agreement if the OFT—
  - (a) considers that the agreement is exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption; and
  - (b) does not have reasonable grounds for suspecting that the circumstances may be such that it could exercise its power to cancel the exemption.
- (9) Subsection (3) does not permit an investigation to be conducted if the OFT—
  - (a) considers that the agreement is an agreement to which the prohibition in Article 81(1) is inapplicable by virtue of a regulation of the Commission (“the relevant regulation”); and

(b) does not have reasonable grounds for suspecting that the conditions set out in Article 29(2) of the EC Competition Regulation for the withdrawal of the benefit of the relevant regulation may be satisfied in respect of that agreement.

(10) Subsection (6) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was exempt from the Chapter I prohibition as a result of a block exemption or a parallel exemption.

(11) Subsection (7) does not permit an investigation to be conducted in relation to any agreement if the OFT considers that, at the time in question, the agreement was an agreement to which the prohibition in Article 81(1) was inapplicable by virtue of a regulation of the Commission.

(12) It is immaterial for the purposes of subsection (6) or (7) whether the agreement in question remains in existence.”

**11.** In section 26(1) (powers when conducting investigations), the words “under section 25” shall cease to have effect.

**12.—**(1) Section 27 (power to enter premises without a warrant) is amended as follows.

(2) In subsection (1)—

(a) for the words “any premises” there is substituted “ any business premises ”;

(b) the words “under section 25” shall cease to have effect.

(3) In subsection (3)—

(a) in paragraph (a)(i), for the words “section 25(a)” there is substituted “ section 25 ”;

(b) in paragraph (a)(ii), for the words “section 25(b)” there is substituted “ section 25 ”.

(4) In subsection (5), after paragraph (e) there is inserted—

“(f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.”

(5) After subsection (5) there is inserted—

“(6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.”

(6) In the sidenote, for the words “Power to enter premises without a warrant” there is substituted “ Power to enter business premises without a warrant ”.

**13.—**(1) Section 28 (power to enter premises under a warrant) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a), for the words “any premises” there is substituted “ any business premises ”;

(b) in paragraph (b)(i), for the words “any premises” there is substituted “ any business premises ”.

(3) After subsection (7), there is inserted—

“(8) In this section “business premises” has the same meaning as in section 27.”

(4) In the sidenote, for the words “Power to enter premises under a warrant” there is substituted “ Power to enter business premises under a warrant ”.

**14.** After section 28 there is inserted—

**“ 28A Power to enter domestic premises under a warrant**

(1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—

- (a) there are reasonable grounds for suspecting that there are on any domestic premises documents—
  - (i) the production of which has been required under section 26; and
  - (ii) which have not been produced as required; or
- (b) there are reasonable grounds for suspecting that—
  - (i) there are on any domestic premises documents which the OFT has power under section 26 to require to be produced; and
  - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the OFT, and any other of its officers whom the OFT has authorised in writing to accompany the named officer—

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
- (c) to take possession of any documents appearing to be of the relevant kind if—
  - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
  - (ii) it is not reasonably practicable to take copies of the documents on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
- (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
  - (i) in which it can be taken away, and
  - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

(9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—

- (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
- (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.”.

**15.**—(1) Section 29 (entry of premises under a warrant: supplementary) is amended as follows.

(2) In subsection (1), after the words “section 28” there is inserted “ or 28A ”.

(3) In subsection (2), after the words “section 28” there is inserted “ or 28A ”.

**16.** In section 30A (use of statements in prosecution), for the words “to 28” there is substituted “ to 28A ”.

**17.** For section 31 (decisions following an investigation) there is substituted—

“(1) If as a result of an investigation the OFT proposes to make a decision, the OFT must—

- (a) give written notice to the person (or persons) likely to be affected by the proposed decision; and
- (b) give that person (or those persons) an opportunity to make representations.

(2) For the purposes of this section and sections 31A and 31B “decision” means a decision of the OFT—

- (a) that the Chapter I prohibition has been infringed;
- (b) that the Chapter II prohibition has been infringed;
- (c) that the prohibition in Article 81(1) has been infringed; or
- (d) that the prohibition in Article 82 has been infringed.”.

**18.** After section 31 there is inserted—

### “ **31A Commitments**

(1) Subsection (2) applies in a case where the OFT has begun an investigation under section 25 but has not made a decision (within the meaning given by section 31(2)).

(2) For the purposes of addressing the competition concerns it has identified, the OFT may accept from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.

(3) At any time when commitments are in force the OFT may accept from the person (or persons) who gave the commitments—

- (a) a variation of them if it is satisfied that the commitments as varied will address its current competition concerns;
- (b) commitments in substitution for them if it is satisfied that the new commitments will address its current competition concerns.

(4) Commitments under this section—

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- (a) shall come into force when accepted; and
- (b) may be released by the OFT where—
  - (i) it is requested to do so by the person (or persons) who gave the commitments; or
  - (ii) it has reasonable grounds for believing that the competition concerns referred to in subsection (2) or (3) no longer arise.
- (5) The provisions of Schedule 6A to this Act shall have effect with respect to procedural requirements for the acceptance, variation and release of commitments under this section.

### **31B Effect of commitments under section 31A**

- (1) Subsection (2) applies if the OFT has accepted commitments under section 31A (and has not released them).
- (2) In such a case, the OFT shall not—
  - (a) continue the investigation,
  - (b) make a decision (within the meaning of section 31(2)), or
  - (c) give a direction under section 35,in relation to the agreement or conduct which was the subject of the investigation (but this subsection is subject to subsections (3) and (4)).
- (3) Nothing in subsection (2) prevents the OFT from taking any action in relation to competition concerns which are not addressed by commitments accepted by it.
- (4) Subsection (2) also does not prevent the OFT from continuing the investigation, making a decision, or giving a direction where—
  - (a) it has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted;
  - (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
  - (c) it has reasonable grounds for suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular.
- (5) If, pursuant to subsection (4), the OFT makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.

### **31C Review of commitments**

- (1) Where the OFT is reviewing or has reviewed the effectiveness of commitments accepted under section 31A it must, if requested to do so by the Secretary of State, prepare a report of its findings.
- (2) The OFT must—
  - (a) give any report prepared by it under subsection (1) to the Secretary of State; and
  - (b) publish the report.

### **31D Guidance**

- (1) The OFT must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.
- (2) The OFT may at any time alter the guidance.
- (3) If the guidance is altered, the OFT must publish it as altered.
- (4) No guidance is to be published under this section without the approval of the Secretary of State.
- (5) The OFT may, after consulting the Secretary of State, choose how it publishes its guidance.
- (6) If the OFT is preparing or altering guidance under this section it must consult such persons as it considers appropriate.
- (7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.
- (8) When exercising its discretion to accept commitments under section 31A, the OFT must have regard to the guidance for the time being in force under this section.

### **31E Enforcement of commitments**

- (1) If a person from whom the OFT has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the OFT may apply to the court for an order—
  - (a) requiring the defaulter to make good his default within a time specified in the order; or
  - (b) if the commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.
- (2) An order of the court under subsection (1) may provide for all the costs of, or incidental to, the application for the order to be borne by—
  - (a) the person in default; or
  - (b) any officer of an undertaking who is responsible for the default.
- (3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.

**19.**—(1) Section 32 (directions in relation to agreements) is amended as follows.

- (2) In subsection (1), after the words “the Chapter I prohibition” there is inserted “ or that it infringes the prohibition in Article 81(1) ”.
- (3) Subsection (2) shall cease to have effect.

**20.**—(1) Section 33 (directions in relation to conduct) is amended as follows.

- (2) In subsection (1), after the words “the Chapter II prohibition” there is inserted “ or that it infringes the prohibition in Article 82 ”.
- (3) Subsection (2) shall cease to have effect.

**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.”.

**22.**—(1) Section 36 (penalty for infringing Chapter I or Chapter II prohibition) is amended as follows.

(2) In subsection (1), after the words “the Chapter I prohibition” there is inserted “ or that it has infringed the prohibition in Article 81(1) ”.

(3) In subsection (2), after the words “the Chapter II prohibition” there is inserted “ or that it has infringed the prohibition in Article 82 ”.

(4) In subsection (4), after the words “Subsection (1) is subject to section 39 and does not apply” there is inserted “ in relation to a decision that an agreement has infringed the Chapter I prohibition ”.

(5) In subsection (5), after the words “Subsection (2) is subject to section 40 and does not apply” there is inserted “ in relation to a decision that conduct has infringed the Chapter II prohibition ”.

(6) In the sidenote, for the words “Penalty for infringing the Chapter I or Chapter II prohibition” there is substituted “ Penalties ”.

**23.**—(1) Section 38 (the appropriate level of penalty) is amended as follows.



(2) After subsection (1) there is inserted— “ (1A) The guidance must include provision about the circumstances in which, in determining a penalty under this Part, the OFT may take into account effects in another Member State of the agreement or conduct concerned. ”.

**24.**—(1) Section 39 (limited immunity for small agreements) is amended as follows.

(2) In subsection (3), after the words “A party to a small agreement is immune from the effect of section 36(1)” there is inserted “ so far as that provision relates to decisions about infringement of the Chapter I prohibition ”.

(3) In the side note, for the words “Limited immunity for small agreements” there is substituted “ Limited immunity in relation to the Chapter I prohibition ”.

**25.**—(1) Section 40 (limited immunity in relation to the Chapter II prohibition) is amended as follows.

(2) In subsection (3), after the words “A person is immune from the effect of section 36(2)” there is inserted “ , so far as that provision relates to decisions about infringement of the Chapter II prohibition, ”.

**26.** Section 41 (agreements notified to the Commission) shall cease to have effect.

**27.**—(1) Section 42 (offences) is amended as follows.

(2) In subsection (1), for the words “or 28” there is substituted “ , 28 or 28A ”.

(3) In subsection (7), for the words “section 28” there is substituted “ section 28 or 28A ”.

**28.**—(1) Section 43 (destroying or falsifying documents) is amended as follows.

(2) In subsection (1), for the words “or 28” there is substituted “ , 28 or 28A ”.

**29.**—(1) Section 46 (appealable decisions) is amended as follows.

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

“(3) In this section “decision” means a decision of the OFT—

- (a) as to whether the Chapter I prohibition has been infringed,
- (b) as to whether the prohibition in Article 81(1) has been infringed,
- (c) as to whether the Chapter II prohibition has been infringed,
- (d) as to whether the prohibition in Article 82 has been infringed,
- (e) cancelling a block or parallel exemption,
- (f) withdrawing the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation,
- (g) not releasing commitments pursuant to a request made under section 31A(4)(b)(i),
- (h) releasing commitments under section 31A(4)(b)(ii),
- (i) as to the imposition of any penalty under section 36 or as to the amount of any such penalty,

and includes a direction under section 32, 33 or 35 and such other decisions under this Part as may be prescribed.”.

**30.**—(1) Section 47 (third party appeals) is amended as follows.

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

“(1) A person who does not fall within section 46(1) or (2) may appeal to the Tribunal with respect to—

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- (a) a decision falling within paragraphs (a) to (f) of section 46(3);
- (b) a decision falling within paragraph (g) of section 46(3);
- (c) a decision of the OFT to accept or release commitments under section 31A, or to accept a variation of such commitments other than a variation which is not material in any respect;
- (d) a decision of the OFT to make directions under section 35;
- (e) a decision of the OFT not to make directions under section 35; or
- (f) such other decision of the OFT under this Part as may be prescribed.”.

**31.—**(1) Section 52 (advice and information) is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) As soon as is reasonably practicable after 1st May 2004, the OFT must prepare and publish general advice and information about—

- (a) the application of the prohibitions in Article 81(1) and Article 82; and
- (b) the enforcement by it of those prohibitions.”.

**32.** Section 53 (fees) shall cease to have effect.

**33.—**(1) Section 54 (regulators) is amended as follows.

(2) In subsection (4), for the words following “as a result of” there is substituted “ any enactment (including any subordinate legislation) whenever passed or made ”.

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

“(8) In this section, “subordinate legislation” has the same meaning as in section 21(1) of the Interpretation Act 1978 (c 30) and includes an instrument made under—

- (a) an Act of the Scottish Parliament;
- (b) Northern Ireland legislation.”.

**34.—**(1) Section 58 (findings of fact by OFT) is amended as follows.

(2) In subsection (1), the words “or the OFT has decided to take further action in accordance with section 16(2) or 24(2)” shall cease to have effect.

(3) In subsection (2)—

(a) for the definition of “an OFT’s finding” there is substituted—

““an OFT’s finding” means a finding of fact made by the OFT in the course of conducting an investigation;”;

(b) for the definition of “Part 1 Proceedings” there is substituted—

““Part 1 proceedings” means proceedings brought otherwise than by the OFT—

- (a) in respect of an alleged infringement of the Chapter I prohibition or of the Chapter II prohibition; or
- (b) in respect of an alleged infringement of the prohibitions in Article 81(1) or Article 82;”;

(c) in the definition of “relevant party”—

“(i) in paragraph (a), after “the Chapter I prohibition” insert “ or the prohibition in Article 81(1) ”; and

(ii) in paragraph (b), after “the Chapter II prohibition” insert “ or the prohibition in Article 82. ””

- 35.**—(1) Section 59 (interpretation of Part 1) is amended as follows.
- (2) In subsection (1)—
- (a) after the words “In this Part—” there is inserted— “ “agreement” to be read with section 2(5) and (6); ”;
  - (b) for the definition of “Article 85” there is substituted—  
““Article 81(1)” means Article 81(1) of the Treaty;”;  
““Article 81(3)” means Article 81(3) of the Treaty;”;
  - (c) for the definition of “Article 86” there is substituted—  
““Article 82” means Article 82 of the Treaty;”;
  - (d) after the definition of “the European Court” there is inserted—  
““the EC Competition Regulation” means Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;”;
  - (e) the definition of “individual exemption” shall cease to have effect;
  - (f) after the definition of “investigating officer” there is inserted—  
““investigation” means an investigation under section 25;”;
  - (g) for the definition of “premises” there is substituted—  
““premises” includes any land or means of transport;”;
  - (h) after the definition of “Tribunal rules” there is inserted—  
““working day” means a day which is not—
    - (a) Saturday,
    - (b) Sunday,
    - (c) Christmas Day,
    - (d) Good Friday, or
    - (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the United Kingdom.”.
- (3) In the sidenote, for the word “Interpretation” there is substituted “ Interpretation of Part 1 ”.
- 36.** For section 61 (introduction), and the Part heading immediately preceding that section, there is substituted—

## “PART 2

### Inspections under Articles 20, 21 and 22(2)

#### **61 Interpretation of Part 2**

In this Part—

“Article 20 inspection” means an inspection ordered by a decision of the Commission under Article 20(4) of the EC Competition Regulation which is not an Article 22(2) inspection;

“Article 21 inspection” means an inspection ordered by a decision of the Commission under Article 21 of the EC Competition Regulation;

“Article 22(2) inspection” means an inspection requested by the Commission under Article 22(2) of the EC Competition Regulation;

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- “books and records” includes books and records stored on any medium;
- “the Commission” means the European Commission;
- “the EC Competition Regulation” means Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty;
- “the OFT” means the Office of Fair Trading;
- “premises” includes any land or means of transport;
- “the Treaty” means the treaty establishing the European Community.”.

**37.—**(1) Section 62 (power to enter premises: Commission investigations) is amended as follows.

(2) In subsection (1)—

- (a) for the word “may” there is substituted “ shall ”;
- (b) for the words “a Commission investigation is being, or is likely to be, obstructed” there is substituted—
  - “(a) the Commission has ordered an Article 20 inspection;
  - (b) the Article 20 inspection is being, or is likely to be, obstructed; and
  - (c) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard to the subject matter of the Article 20 inspection.”.

(3) In subsection (2)—

- (a) for the words “A Commission investigation” there is substituted “ An Article 20 inspection ”;
- (b) in paragraph (a)—
  - (i) for the words “an official of the Commission (“the Commission official”)” there is substituted “ a Commission official ”;
  - (ii) for the words “the provision under which the investigation is being conducted” there is substituted “ Article 20(3) of the EC Competition Regulation ”; and
  - (iii) for the words “premises” there is substituted “ any business premises ”.
- (c) in paragraph (b)—
  - (i) the words “on the premises” shall cease to have effect;
  - (ii) after the words “suspecting that there are” there is inserted “ on any business premises ”.

(4) In subsection (3)—

- (a) for the words “A Commission investigation” there is substituted “ An Article 20 inspection ”;
- (b) the words “on the premises” shall cease to have effect;
- (c) after the words “suspecting that there are” there is inserted “ on any business premises ”;
- (d) in paragraph (a),
  - (i) for the words “an official of the Commission” there is substituted “ a Commission official ”;
  - (ii) for the words “the provision under which the investigation is being conducted” there is substituted “ Article 20(3) of the EC Competition Regulation ”.

(5) In subsection (4)—

- (a) for the words “A Commission investigation” there is substituted “ An Article 20 inspection ”;
  - (b) paragraph (a) shall cease to have effect;
  - (c) in paragraph (b),
    - (i) after the words “suspecting that there are” there is inserted “ on any business premises ”;
    - (ii) the words “on the premises” shall cease to have effect; and
    - (iii) for the words “the Commission official” there is substituted “ a Commission official ”.
- (6) For subsection (5) there is substituted—
- “(5) A warrant under this section shall authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer—
- (a) to enter any business premises specified in the warrant using such force as is reasonably necessary for the purpose;
  - (b) to search for books and records which a Commission official has power to examine, using such force as is reasonably necessary for the purpose;
  - (c) to take or obtain copies of or extracts from such books and records;
  - (d) to seal the premises, any part of the premises or any books or records which a Commission official has power to seal, for the period and to the extent necessary for the inspection.”.
- (7) After subsection (9) there is inserted—
- “(10) In this section—
- “business premises” means any premises of an undertaking or association of undertakings which a Commission official has under Article 20 of the EC Competition Regulation power to enter in the course of the Article 20 inspection;
- “Commission official” means any of the persons authorised by the Commission to conduct the Article 20 inspection; and
- “OFT officer” means any officer of the OFT whom the OFT has authorised in writing to accompany the named officer.
- (11) In subsection (10), the reference in the definition of “business premises” to Article 20 of the EC Competition Regulation does not include a reference to that Article as applied by Article 21 of that Regulation.”.
- (8) In the sidenote, for the words “Power to enter Premises: Commission investigations” there is substituted “ Power to enter business premises under a warrant: Article 20 inspections ”.

**38.** After section 62 there is inserted—

**“ 62A Power to enter non-business premises under a warrant: Article 21 inspections**

- (1) A judge of the High Court shall issue a warrant if satisfied, on an application made to the High Court in accordance with the rules of court by the OFT, that—
  - (a) the Commission has ordered an Article 21 inspection; and
  - (b) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard in particular to the matters mentioned in subsection (2).
- (2) Those matters are—

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- (a) the seriousness of the suspected infringement of Article 81(1) or 82 of the Treaty;
- (b) the importance of the evidence sought;
- (c) the involvement of the undertaking or association of undertakings concerned; and
- (d) whether it is reasonably likely that business books and records relating to the subject matter of the Article 21 inspection are kept on the non-business premises that would be specified in the warrant.

(3) A warrant under this section shall authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer to enter any non-business premises specified in the warrant.

(4) A warrant under this section may authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer to search for books or records which a Commission official has power to examine.

(5) A warrant under this section may authorise a named officer of the OFT and any other OFT officer, or Commission official, accompanying the named officer to take or obtain copies of books or records of which a Commission official has power to take or obtain copies.

(6) A warrant granted under this section may authorise the use, for either or both of the purposes mentioned in subsections (3) and (4), of such force as is reasonably necessary.

(7) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(8) Any person entering any premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(9) On leaving any premises entered by virtue of a warrant the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(10) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(11) In the application of this section to Scotland, references to the High Court are to be read as references to the Court of Session.

(12) In this section—

“non-business premises” means any premises to which a decision of the Commission ordering the Article 21 inspection relates;

“Commission official” means any of the persons authorised by the Commission to conduct the Article 21 inspection; and

“OFT officer” means any officer of the OFT whom the OFT has authorised in writing to accompany the named officer.”.

**39.** After section 62A, there is inserted—

**“ 62B Powers when conducting an Article 22(2) inspection**

(1) For the purposes of an Article 22(2) inspection, an authorised officer of the OFT has the powers specified in Article 20(2) of the EC Competition Regulation.

(2) For the purposes of this section and section 63—

“authorised officer of the OFT” means any officer of the OFT to whom an authorisation has been given; and

“authorisation” means an authorisation given in writing by the OFT for the purposes of the Article 22(2) inspection which—

- (i) identifies the officer;
- (ii) indicates the subject matter and purpose of the inspection; and
- (iii) draws attention to any penalties which a person may incur under the EC Competition Regulation in connection with the inspection.”.

**40.**—(1) Section 63 (power to enter premises: OFT’s special investigations) is amended as follows.

(2) In subsection (1)—

- (a) for the word “may” there is substituted “ shall ”;
- (b) for the words “an OFT’s special investigation is being, or is likely to be, obstructed” there is substituted—
  - “(a) the Commission has requested the OFT to conduct an Article 22(2) inspection which the Commission has ordered by a decision under Article 20(4) of the EC Competition Regulation;
  - (b) the Article 22(2) inspection is being, or is likely to be, obstructed; and
  - (c) the measures that would be authorised by the warrant are neither arbitrary nor excessive having regard to the subject matter of the Article 22(2) inspection.”.

(3) In subsection (2)—

- (a) for the words “An OFT’s special investigation” there is substituted “ An Article 22(2) inspection ”;
- (b) in paragraph (a), after the words “has attempted to enter” there is inserted “ any business ”;
- (c) in paragraph (c)—
  - (i) the words “on the premises” shall cease to have effect;
  - (ii) after the words “suspecting that there are” there is inserted “ on any business premises ”.

(4) In subsection (3)—

- (a) for the words “An OFT’s special investigation” there is substituted “ An Article 22(2) inspection ”;
- (b) in paragraph (a)—
  - (i) the words “on the premises” shall cease to have effect;
  - (ii) after the words “suspecting that there are” there is inserted “ on any business premises ”.

(5) In subsection (4)—

- (a) for the words “An OFT’s special investigation” there is substituted “ An Article 22(2) inspection ”;
- (b) in paragraph (a)—
  - (i) the words “on the premises” shall cease to have effect;
  - (ii) after the words “suspecting that there are” there is inserted “ on any business premises ”.

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

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“(5) A warrant under this section shall authorise a named authorised officer of the OFT and any other authorised officer of the OFT, or Commission official, accompanying the named authorised officer—

- (a) to enter any business premises specified in the warrant using such force as is reasonably necessary for the purpose;
- (b) to search for books and records which an authorised officer of the OFT has power to examine, using such force as is reasonably necessary for the purpose;
- (c) to take or obtain copies of or extracts from such books and records; and
- (d) to seal the premises, any part of the premises or any books or records which an authorised officer of the OFT has power to seal, for the period and to the extent necessary for the inspection.”.

(7) In subsection (7), for the words “named officer” there is substituted “ named authorised officer ”.

(8) After subsection (9) there is inserted—

“(10) In this section—

“business premises” means any premises of an undertaking or association of undertakings which an authorised officer of the OFT has power to enter in the course of the Article 22(2) inspection;

“Commission official” means any person authorised by the Commission to assist with the Article 22(2) inspection.”.

(9) In the sidenote, for the words “Power to enter premises: OFT’s special investigations” there is substituted “ Power to enter business premises under a warrant: Article 22(2) inspections ”.

**41.—**(1) Section 64 (entry of premises under sections 62 and 63: supplementary) is amended as follows.

(2) In subsection (1), for the word “investigation” there is substituted “ inspection ”.

(3) In subsection (5), for the definition of “named officer” there is substituted—

““named officer” means—

- (a) for the purposes of a warrant issued under section 62 or 62A, the officer named in the warrant; and
- (b) for the purposes of a warrant issued under section 63, the authorised officer named in the warrant;”.

(4) In the sidenote, and in each of subsections (1) and (2), after “62” there is inserted “ , 62A ”.

**42.—**(1) Section 65 (offences) is amended as follows.

(2) In subsection (1), after “62” there is inserted “ , 62A ”.

**43.** After section 65, there is inserted—

**“ 65A Privileged communications: Article 22(2) inspections**

(1) A person shall not be required, by virtue of any provision of section 62B or 63, to produce or disclose a privileged communication.

(2) “Privileged communication” means a communication—

- (a) between a professional legal adviser and his client, or



(b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,  
which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

(3) In the application of this section to Scotland—

- (a) the reference to the High Court is to be read as a reference to the Court of Session; and
- (b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

#### **65B Use of statements in prosecution: Article 22(2) inspections**

A statement made by a person in response to a requirement imposed by virtue of section 62B or 63 may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

- (a) in giving evidence, he makes a statement inconsistent with it, and
- (b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.”.

44. After Part 2, there is inserted—

## **“PART 2A**

### Article 22(1) investigations

#### **65C Interpretation of Part 2A**

(1) In this Part—

“Article 22(1) investigation” means an investigation conducted by the OFT on behalf and for the account of a competition authority of another Member State pursuant to Article 22(1) of the EC Competition Regulation;

“the Commission” means the European Commission;

“competition authority of another Member State” means a competition authority designated as such under Article 35 of the EC Competition Regulation by a Member State other than the United Kingdom;

“the EC Competition Regulation” means Council Regulation (EC) No. 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; and

“investigating officer” has the meaning given in section 65F(1).

(2) In this Part, the following expressions have the same meanings as in Part 1—

“Article 81(1)”;

“Article 82”;

“the court”;

“document”;

“information”;

“officer”;

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“the OFT”;  
“person”;  
“premises”  
“the Treaty”; and  
“working day”.

(3) For the purposes of this Part, the power to require information, in relation to information recorded otherwise than in a legible form, includes power to require a copy of it in a legible form.

(4) Any power conferred on the OFT by this Part to require information includes power to require any document which it believes may contain that information.

### **65D Power to conduct an Article 22(1) investigation**

(1) In any of the following cases, the OFT may conduct an Article 22(1) investigation.

(2) The first case is where there are reasonable grounds for suspecting 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.

(3) The second case is where there are reasonable grounds for suspecting that the prohibition in Article 82 has been infringed.

(4) The third case is where there are reasonable grounds for suspecting that, at some time in the past, there was an agreement which at that time—

- (a) may have affected trade between Member States; and
- (b) had as its object or effect the prevention, restriction or distortion of competition within the Community.

(5) It is immaterial for the purposes of subsection (4) whether the agreement in question remains in existence.

(6) A provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice.

### **65E Powers when conducting Article 22(1) investigations**

(1) For the purposes of an Article 22(1) investigation, the OFT may require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.

(2) The power conferred by subsection (1) is to be exercised by a notice in writing.

(3) A notice under subsection (2) must indicate—

- (a) the subject matter and purpose of the Article 22(1) investigation; and
- (b) the nature of the offences created by sections 65L to 65N.

(4) In subsection (1) “specified” means—

- (a) specified, or described, in the notice; or
- (b) falling within a category which is specified, or described, in the notice.

- (5) The OFT may also specify in the notice—
  - (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
  - (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require him, or any person who is a present or past officer of his, or is or was at any time employed by him, to provide an explanation of the document;
  - (b) if the document is not produced, to require him to state, to the best of his knowledge and belief, where it is.

### **65F Power to enter business premises without a warrant**

- (1) Any officer of the OFT who is authorised in writing by the OFT to do so (“an investigating officer”) may enter any business premises in connection with an Article 22(1) investigation.
- (2) No investigating officer is to enter any premises in the exercise of his powers under this section unless he has given to the occupier of the premises a written notice which—
  - (a) gives at least two working days' notice of the intended entry;
  - (b) indicates the subject matter and purpose of the Article 22(1) investigation; and
  - (c) indicates the nature of the offences created by sections 65L to 65N.
- (3) Subsection (2) does not apply—
  - (a) if the OFT has a reasonable suspicion that the premises are, or have been, occupied by—
    - (i) a party to an agreement which it is investigating under section 65D; or
    - (ii) an undertaking the conduct of which it is investigating under section 65D; or
  - (b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.
- (4) In a case falling within subsection (3), the power of entry conferred by subsection (1) is to be exercised by the investigating officer on production of—
  - (a) evidence of his authorisation; and
  - (b) a document containing the information referred to in subsection (2)(b) and (c).
- (5) An investigating officer entering any premises under this section may—
  - (a) take with him such equipment as appears to him to be necessary;
  - (b) require any person on the premises—
    - (i) to produce any document which he considers relates to any matter relevant to the investigation; and
    - (ii) if the document is produced, to provide an explanation of it;
  - (c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;
  - (d) take copies of, or extracts from, any document which is produced;
  - (e) require any information which is stored in any electronic form and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—

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- (i) in which it can be taken away, and
  - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form;
  - (f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he consider relates to any matter relevant to the investigation.
- (6) In this section “business premises” means premises (or any part of premises) not used as a dwelling.

### **65G Power to enter business premises under a warrant**

- (1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—
- (a) there are reasonable grounds for suspecting that there are on any business premises documents—
    - (i) the production of which has been required under section 65E or 65F; and
    - (ii) which have not been produced as required;
  - (b) there are reasonable grounds for suspecting that—
    - (i) there are on any business premises documents which the OFT has power under section 65E to require to be produced; and
    - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or
  - (c) an investigating officer has attempted to enter premises in the exercise of his powers under section 65F but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that section.
- (2) A warrant under this section shall authorise a named officer of the OFT and any other of its officers whom the OFT has authorised in writing to accompany the named officer—
- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
  - (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);
  - (c) to take possession of any documents appearing to be of the relevant kind if—
    - (i) such action appears to be necessary for preserving the documents or preventing interference with them; or
    - (ii) it is not reasonably practicable to take copies of the documents on the premises;
  - (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);
  - (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;
  - (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the Article 22(1) investigation, to be produced in a form—
    - (i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the Article 22(1) investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.

(4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.

(5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.

(6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.

(9) In this section “business premises” has the same meaning as in section 65F.

#### **65H Power to enter domestic premises under a warrant**

(1) On an application made by the OFT to the court in accordance with rules of court, a judge may issue a warrant if he is satisfied that—

(a) there are reasonable grounds for suspecting that there are on any domestic premises documents—

(i) the production of which has been required under section 65E; and

(ii) which have not been produced as required; or

(b) there are reasonable grounds for suspecting that—

(i) there are on any domestic premises documents which the OFT has power under section 65E to require to be produced; and

(ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the OFT, and any other of its officers whom the OFT has authorised in writing to accompany the named officer—

(a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (“the relevant kind”);

(c) to take possession of any documents appearing to be of the relevant kind if—

(i) such action appears to be necessary for preserving the documents or preventing interference with them; or

(ii) it is not reasonably practicable to take copies of the documents on the premises;

(d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c)(i);

- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge or belief, where it may be found;
  - (f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—
    - (i) in which it can be taken away; and
    - (ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.
- (3) If, in the case of a warrant under subsection (1)(b), the judge is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in subsection (2) to be taken in relation to any such document.
- (4) A warrant under this section may authorise persons specified in the warrant to accompany the named officer who is executing it.
- (5) Any person entering premises by virtue of a warrant under this section may take with him such equipment as appears to him to be necessary.
- (6) On leaving any premises which he has entered by virtue of a warrant under this section, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.
- (7) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under subsection (2)(c) may be retained for a period of three months.
- (9) In this section, “domestic premises” means premises (or any part of premises) that are used as a dwelling and are—
  - (a) premises also used in connection with the affairs of an undertaking or association of undertakings; or
  - (b) premises where documents relating to the affairs of an undertaking or association of undertakings are kept.

### **65I Entry of premises under a warrant: supplementary**

- (1) A warrant issued under section 65G or 65H must indicate—
  - (a) the subject matter of the Article 22(1) investigation;
  - (b) the nature of the offences created by sections 65L to 65N.
- (2) The powers conferred by section 65G or 65H are to be exercised on production of a warrant issued under that section.
- (3) If there is no one at the premises when the named officer proposes to execute such a warrant he must, before executing it—
  - (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
  - (b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.
- (4) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.

(5) In this section—

“named officer” means the officer named in the warrant; and

“occupier”, in relation to any premises, means a person whom the named officer reasonably believes is the occupier of those premises.

### **65J Privileged communications**

(1) A person shall not be required, under any provision of this Part, to produce or disclose a privileged communication.

(2) “Privileged communication” means a communication—

(a) between a professional legal adviser and his client, or

(b) made in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings,

which in proceedings in the High Court would be protected from disclosure on grounds of legal professional privilege.

(3) In the application of this section to Scotland—

(a) the reference to the High Court is to be read as a reference to the Court of Session; and

(b) the reference to legal professional privilege is to be read as a reference to confidentiality of communications.

### **65K Use of statements in prosecution**

A statement made by a person in response to a requirement imposed by virtue of any of sections 65E to 65H may not be used in evidence against him on a prosecution for an offence under section 188 of the Enterprise Act 2002 unless, in the proceedings—

(a) in giving evidence, he makes a statement inconsistent with it, and

(b) evidence relating to it is adduced, or a question relating to it is asked, by him or on his behalf.

### **65L Offences**

(1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under section 65E, 65F, 65G or 65H.

(2) If a person is charged with an offence under subsection (1) in respect of a requirement to produce a document, it is a defence for him to prove—

(a) that the document was not in his possession or under his control; and

(b) that it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under subsection (1) in respect of a requirement—

(a) to provide information,

(b) to provide an explanation of a document, or

(c) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 65E or 65F is not an offence if the person imposing the requirement has failed to act in accordance with that section.

(5) A person is guilty of an offence if he intentionally obstructs an officer acting in the exercise of his powers under section 65F.

(6) A person guilty of an offence under subsection (1) or (5) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(7) A person who intentionally obstructs an officer in the exercise of his powers under a warrant issued under section 65G or 65H is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### **65M Destroying or falsifying documents**

(1) A person is guilty of an offence if, having been required to produce a document under section 65E, 65F, 65G or 65H—

- (a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or
- (b) he causes or permits its destruction, disposal, falsification or concealment.

(2) A person guilty of an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

### **65N False or misleading information**

(1) If information is provided by a person to the OFT in connection with any function of the OFT under this Part, that person is guilty of an offence if—

- (a) the information is false or misleading in a material particular; and
- (b) he knows that it is or is reckless as to whether it is.

(2) A person who—

- (a) provides any information to another person, knowing the information to be false or misleading in a material particular, or
- (b) recklessly provides any information to another person which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of providing information to the OFT in connection with any of its functions under this Part, is guilty of an offence.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”.



45. In section 72(1) (offences by bodies corporate etc), for the words “55(8) or (65)” there is substituted “ 65 or 65L to 65N ”.

46.—(1) Section 73 (crown application) is amended as follows.

(2) For subsection (4) there is substituted—

“(4) If an investigation is conducted under section 25 or 65D in respect of an agreement where none of the parties is the Crown or a person in the public service of the Crown, or in respect of conduct otherwise than by the Crown or such a person—

(a) the power conferred by section 27 or (as the case may be) section 65F may not be exercised in relation to land which is occupied by a government department, or otherwise for purposes of the Crown, without the written consent of the appropriate person; and

(b) none of sections 28, 28A, 65G and 65H applies in relation to land so occupied.”.

(3) In subsection (6)—

(a) after the word “62” there is inserted “ , 62A ”;

(b) for the words from “a suspected infringement” onwards there is substituted “ an agreement to which the Crown or a person in the service of the Crown is a party, or conduct by the Crown or such a person ”.

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

“(6A) In subsections (4) and (6) “agreement” includes a suspected agreement and is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice; and “conduct” includes suspected conduct.”.

(5) Subsection (7) shall cease to have effect.

(6) In subsection (8)—

(a) in paragraph (a), after the words “section 27” there is inserted “ or 65F ”;

(b) in paragraph (b), for the words “section 28, 62 or 63” there is substituted “ section 28, 28A, 62, 62A, 63, 65G or 65H ”.

47. After section 75 there is inserted—

**“ 75A Rules in relation to Part 2 and Part 2A**

(1) The OFT may make such rules about procedural and other matters in connection with the carrying into effect of the provisions of Parts 2 and 2A as it considers appropriate.

(2) If the OFT is preparing rules under this section it must consult such persons as it considers appropriate.

(3) No rule made by the OFT is to come into operation until it has been approved by an order made by the Secretary of State.

(4) The Secretary of State may approve any rule made by the OFT—

(a) in the form in which it is submitted; or

(b) subject to such modifications as he considers appropriate.

(5) If the Secretary of State proposes to approve a rule subject to modifications he must inform the OFT of the proposed modifications and take into account any comments made by the OFT.

(6) Subsections (3) to (5) apply also to any alteration of the rules made by the OFT.

*Changes to legislation: There are currently no known outstanding effects for the The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004. (See end of Document for details)*

(7) The Secretary of State may, after consulting the OFT, by order vary or revoke any rules made under this section.

(8) If the Secretary of State considers that rules should be made under this section with respect to a particular matter he may direct the OFT to exercise its powers under this section and make rules about that matter.”.

**48.**—(1) Schedule 1 (exclusions: mergers and concentrations) is amended as follows.

(2) In paragraph 4—

(a) for sub-paragraph 5(a), there is substituted—

“(a) it considers that the agreement will, if not excluded, infringe the Chapter I prohibition; and”; and

(b) sub-paragraph (6) shall cease to have effect.

**49.**—(1) Schedule 2 (exclusions: other competition scrutiny) is amended as follows.

(2) Part 2 (companies) shall cease to have effect.

(3) Part 4 (environmental protection) shall cease to have effect.

**50.** In Schedule 3 (general exclusions)—

(a) paragraph 2 shall cease to have effect; and

(b) in paragraph 9—

(i) in sub-paragraph (1)(b), for the words “Article 39” there is substituted “ Article 33 ”;

(ii) in sub-paragraph (2), for the words “Article 85(1)” there is substituted “ Article 81(1) ”;

(iii) in sub-paragraph (9), in the definition of “agricultural product” for “Annex II” there is substituted “ Annex I ”.

**51.** Schedule 5 (notification under Chapter I: procedure) and Schedule 6 (notification under Chapter II: procedure) shall cease to have effect.

**52.** Before Schedule 7 there is inserted—

“SCHEDULE 6A

Section 31A

## COMMITMENTS

### PART 1

#### PROCEDURAL REQUIREMENTS FOR THE ACCEPTANCE AND VARIATION OF COMMITMENTS

**1.** Paragraph 2 applies where the OFT proposes to—

(a) accept any commitments under section 31A; or

(b) accept any variation of such commitments other than a variation which is not material in any respect.

**2.**—(1) Before accepting the commitments or variation, the OFT must—

(a) give notice under this paragraph; and

- (b) consider any representations made in accordance with the notice and not withdrawn.
  - (2) A notice under this paragraph must state—
    - (a) that the OFT proposes to accept the commitments or variation;
    - (b) the purpose of the commitments or variation and the way in which the commitments or variation would meet the OFT’s competition concerns;
    - (c) any other facts which the OFT considers are relevant to the acceptance or variation of the commitments; and
    - (d) the period within which representations may be made in relation to the proposed commitments or variation.
  - (3) The period stated for the purposes of sub-paragraph (2)(d) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.
- 3.—**(1) The OFT must not accept the commitments or variation of which notice has been given under paragraph 2(1) with modifications unless it—
- (a) gives notice under this paragraph of the proposed modifications; and
  - (b) considers any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
- (a) the proposed modifications;
  - (b) the reasons for them; and
  - (c) the period within which representations may be made in relation to the proposed modifications.
- (3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 6 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.
- 4.** If, after giving notice under paragraph 2 or 3 the OFT decides—
- (a) not to accept the commitments or variation concerned, and
  - (b) not to proceed by virtue of paragraph 5 or 6,
- the OFT must give notice that it has so decided.
- 5.** The requirements of paragraph 3 shall not apply if the OFT—
- (a) has already given notice under paragraph 2 but not under paragraph 3; and
  - (b) considers that the modifications which are now being proposed are not material in any respect.
- 6.** The requirements of paragraph 3 shall not apply if the OFT—
- (a) has already given notices under paragraphs 2 and 3; and
  - (b) considers that the further modifications which are now being proposed are not material in any respect or do not differ in any material respect from the modifications in relation to which notice was last given under paragraph 3.
- 7.** As soon as practicable after accepting commitments or a variation under section 31A the OFT must publish the commitments or the variation in such manner as the OFT considers appropriate.

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8. A notice under paragraph 2 or 3 shall be given by—
- (a) sending a copy of the notice to such person or persons as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it; or
  - (b) publishing the notice in such manner as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.

## PART 2

### PROCEDURAL REQUIREMENTS FOR THE RELEASE OF COMMITMENTS

10. Paragraph 11 applies where the OFT proposes to release any commitments under section 31A.

- 11.—(1) Before releasing the commitments, the OFT must—
- (a) give notice under this paragraph;
  - (b) send a copy of the notice to the person (or persons) who gave the commitments; and
  - (c) consider any representations made in accordance with the notice and not withdrawn.
- (2) A notice under this paragraph must state—
- (a) the fact that a release is proposed;
  - (b) the reasons for it; and
  - (c) the period within which representations may be made in relation to the proposed release.
- (3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

12. If after giving notice under paragraph 11 the OFT decides not to proceed with the release, it must—

- (a) give notice that it has so decided; and
- (b) send a copy of the notice to the person (or persons) who gave the commitments.

13. As soon as practicable after releasing the commitments, the OFT must—

- (a) publish the release in such manner as it considers appropriate; and
- (b) send a copy of the release to the person (or persons) who gave the commitments.

14. A notice under paragraph 11 or 12 shall be given by—

- (a) sending a copy of the notice to such other person or persons as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it; or
- (b) publishing the notice in such manner as the OFT considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.”.

53.—(1) Schedule 8 (appeals) is amended as follows.

- (2) Before sub-paragraph (1) of paragraph 3 there is inserted—
- “(A1) This paragraph applies to any appeal under section 46 or 47 other than—
- (a) an appeal under section 46 against, or with respect to, a decision of the kind specified in subsection (3)(g) or (h) of that section, and
  - (b) an appeal under section 47(1)(b) or (c).”.

(3) Paragraph (2)(c) of paragraph 3 shall cease to have effect.

(4) After paragraph 3 there is inserted—

“**3A.**—(1) This paragraph applies to—

    - (a) any appeal under section 46 against, or with respect to, a decision of the kind specified in subsection (3)(g) or (h) of that section, and
    - (b) any appeal under section 47(1)(b) or (c).

(2) The Tribunal must, by reference to the grounds of appeal set out in the notice of appeal, determine the appeal by applying the same principles as would be applied by a court on an application for judicial review.

(3) The Tribunal may—

    - (a) dismiss the appeal or quash the whole or part of the decision to which it relates; and
    - (b) where it quashes the whole or part of that decision, remit the matter back to the OFT with a direction to reconsider and make a new decision in accordance with the ruling of the Tribunal.”.

**54.**—(1) Schedule 9 (OFT’s rules) is amended as follows.

(2) For paragraph 1, there is substituted—

“**1.** In this Schedule “rules” means rules made by the OFT under section 51.”.

(3) Paragraphs 2, 3 and 4 shall cease to have effect.

(4) For sub-paragraph (1)(d) of paragraph 5 there is substituted—

“(d) the procedure to be followed if—

      - (i) the OFT takes further action with respect to an agreement after having decided that it does not infringe the Chapter I prohibition;
      - (ii) the OFT takes further action with respect to an agreement after having decided that it does not infringe the prohibition in Article 81(1);
      - (iii) the OFT takes further action with respect to conduct after having decided that it does not infringe the Chapter II prohibition; or
      - (iv) the OFT takes further action with respect to conduct after having decided that it does not infringe the prohibition in Article 82.”.

(5) For sub-paragraph (2) of paragraph 5 there is substituted—

“(2) In this paragraph “decision” means a decision of the OFT—

        - (a) as to whether or not an agreement has infringed the Chapter I prohibition;
        - (b) as to whether or not an agreement has infringed the prohibition in Article 81(1);
        - (c) as to whether or not conduct has infringed the Chapter II prohibition; or
        - (d) as to whether or not conduct has infringed the prohibition in Article 82.”.

(6) Paragraphs 6 and 7 shall cease to have effect.

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- (7) For paragraph 8 there is substituted—
  - “8. Rules may make provision as to—
    - (a) the procedure to be followed by the OFT if it cancels a block exemption;
    - (b) the procedure to be followed by the OFT if it withdraws the benefit of a regulation of the Commission pursuant to Article 29(2) of the EC Competition Regulation.”.
- (8) In paragraph 11, the words “2(3) or” shall cease to have effect.
- (9) In paragraph 14, for the words “32 to 41” there is substituted “ 32 to 40 ”.

SCHEDULE 2

Regulation 5

Amendments to other enactments

- 1.—(1) The Gas Act 1986 <sup>M1</sup> is amended as follows.
- (2) In section 36A (functions with respect to competition)—
  - (a) for subsection (3) there is substituted—
    - “(3) The Authority shall be entitled to exercise, concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—
      - (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
      - (b) conduct of the kind mentioned in section 18(1) of that Act,
      - (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
      - (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,
 which relate to the carrying on of activities to which this subsection applies.”;
    - (b) in subsection (3A), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6) ”;
    - (c) in subsection (7)(b), for the words “other than sections 38(1) to (6)” there is substituted “other than sections 31D(1) to (6), 38(1) to (6) ”.

<p>.....</p> <p><b>Marginal Citations</b></p> <p><b>M1</b> 1986 c. 44.</p>
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- 2.—(1) The Companies Act 1989 <sup>M2</sup> is amended as follows.
- (2) Subsection (2)(a) of section 46 (delegation of functions of Secretary of State), section 47 (restrictive practices) and Schedule 14 (supervisory and qualifying bodies: restrictive practices) shall cease to have effect.
- (3) In section 54 (index of defined expressions) the entry in the Table relating to “Director (in Schedule 14)” shall cease to have effect.

**Marginal Citations**

**M2** 1989 c. 40.

3.—(1) The Electricity Act 1989 <sup>M3</sup> is amended as follows.

(2) In section 43 (functions with respect to competition)—

(a) for subsection (3) there is substituted—

“(3) The Authority shall be entitled to exercise, concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to commercial activities connected with the generation, transmission or supply of electricity.”;

- (b) in subsection (3A), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6) ”;
- (c) in subsection (6)(b), for the words “other than sections 38(1) to (6)” there is substituted “other than sections 31D(1) to (6), 38(1) to (6) ”.

**Marginal Citations**

**M3** 1989 c. 29.

4.—(1) The Water Industry Act 1991 <sup>M4</sup> is amended as follows.

(2) In section 31 (functions of the Director with respect to competition)—

(a) for subsection (3) there is substituted—

“(3) The Director shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to —

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.”;

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- (b) in subsection (4A), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6)”;
- (c) in subsection (8)(b), for the words “other than sections 38(1) to (6)” there is substituted “other than sections 31D(1) to (6), 38(1) to (6).”.

**Marginal Citations**

**M4** 1991 c. 56.

5.—(1) The Electricity (Northern Ireland) Order 1992 <sup>M5</sup> is amended as follows.

(2) In Article 46 (functions with respect to competition)—

(a) for paragraph (3) there is substituted—

“(3) The Director shall be entitled to exercise, concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to commercial activities connected with the generation, transmission or supply of electricity.”;

- (b) in paragraph (3A), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6)”;
- (c) in paragraph (6)(b), for the words “other than sections 38(1) to (6)” there is substituted “other than sections 31D(1) to (6), 38(1) to (6)”.

**Marginal Citations**

**M5** S.I. 1992/231 (N.I.1).

6.—(1) The Railways Act 1993 <sup>M6</sup> is amended as follows.

(2) In section 67 (respective functions of the Regulator and OFT, and functions of the Monopolies Commission)—

(a) for subsection (3) there is substituted—

“(3) The Regulator shall be entitled to exercise, concurrently with the OFT, the functions of the OFT under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,



- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
  - (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,
- which relate to the supply of services relating to railways.”;
- (b) in subsection (3A), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6)”;
  - (c) in subsection (8)(b), for the words “other than sections 38(1) to (6)” there is substituted “other than sections 31D(1) to (6), 38(1) to (6)”.

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**Marginal Citations**

**M6** 1993 c. 43.

- 7.—(1) The Environment Act 1995 <sup>M7</sup> is amended as follows.
- (2) In section 94 (producer responsibility: supplementary provisions)—
    - (a) paragraphs (n), (oa) and (ya) of subsection (1) shall cease to have effect;
    - (b) the definition of “competition scrutiny” in subsection (6) shall cease to have effect;
    - (c) subsection (6A) shall cease to have effect.
  - (3) Section 94A (producer responsibility: competition matters) shall cease to have effect.

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**Marginal Citations**

**M7** 1995 c. 25.

- 8.—(1) The Channel Tunnel Rail Link Act 1996 <sup>M8</sup> is amended as follows.
- (2) In section 22 (restriction of functions in relation to competition etc), for subsection (3) there is substituted—
    - “(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the Railways Act 1993 (by virtue of which he exercises concurrently with the Office of Fair Trading certain functions under Part 1 of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—
      - (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
      - (b) conduct of the kind mentioned in section 18(1) of that Act,
      - (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
      - (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,
- entered into, taken by or engaged in by a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”.

**Marginal Citations**

**M8** 1996 c. 61.

9.—(1) The Gas (Northern Ireland) Order 1996<sup>M9</sup> is amended as follows.

(2) In Article 23 (functions with respect to competition)—

(a) for paragraph (3) there is substituted—

“(3) The Director shall be entitled to exercise, concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

connected with the conveyance, storage or supply of gas.”;

(b) in paragraph (3A), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6)”;

(c) in paragraph (6)(b), for the words “other than sections 38(1) to (6)” there is substituted “other than sections 31D(1) to (6), 38(1) to (6)”.

**Marginal Citations**

**M9** S.I. 1996/275 (N.I.2).

10.—(1) The Transport Act 2000<sup>M10</sup> is amended as follows.

(2) In section 86 (functions exercisable by the CAA and OFT)—

(a) for subsection (3) there is substituted—

“(3) This subsection applies to the OFT’s functions under the provisions of Part 1 of the 1998 Act (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to the supply of air traffic services.”;

(b) in subsection (4)(b), for the words “except in sections 38(1) to (6)” there is substituted “except in sections 31D(1) to (6), 38(1) to (6)”;

- (c) in subsection (7)(b), for the words “except under section 38(1) to (6)” there is substituted “except under section 31D(1) to (6), 38(1) to (6)”.

**Marginal Citations**

**M10** 2000 c. 38.

**11.**—(1) The Communications Act 2003 <sup>M11</sup> is amended as follows.

(2) In section 371 (OFCOM’s functions under the Competition Act 1998)—

(a) for subsection (2) there is substituted—

“(2) This subsection applies to the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to activities connected with communications matters.”;

(b) in subsection (3)(a), for the words “in sections 38(1) to (6)” there is substituted “in sections 31D(1) to (6), 38(1) to (6)”.

**Marginal Citations**

**M11** 2003 c. 21.

**Changes to legislation:**

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