

## SCHEDULE

### TRANSITIONAL PROVISIONS AND SAVINGS: THE COMPETITION AND MARKETS AUTHORITY AND COMPETITION REFORM

#### *Mergers*

#### **General: existing matters**

**3.—**(1) The amendments made by Chapter 1 of Part 4 of the Act, section 49 or 50 of the Act and paragraphs 16 to 20, 21(3) to (5), (6)(a) and (8) to (10), 23, 24, 26, 28, 29 and 35 of Schedule 15 to the Act (mergers) apply in relation to—

- (a) any reference under section 22, 33, 45 or 62 of the 2002 Act made before the commencement date, or
- (b) any possible reference under section 22, 33, 45 or 62 of that Act which arose before that date,

as they apply in relation to any such reference made, or arising, on or after that date.

(2) In particular—

- (a) the amendments mentioned in sub-paragraph (1) apply in relation to investigations begun, notices given, reports published, undertakings accepted or adopted and orders made or adopted before the commencement date as they apply in relation to investigations begun, notices given, reports published, undertakings accepted or adopted and orders made or adopted on or after that date, and
- (b) the amendments made by section 29(2) to (9) of the Act (investigation powers) apply in relation to a matter which, before the commencement date, was the subject of a reference or possible reference under section 22, 33, 45 or 62 of the 2002 Act as they apply in relation to—
  - (i) a matter that is or has been the subject of a reference made on or after that date under section 22, 33, 45 or 62 of the 2002 Act, or
  - (ii) a matter that is or has been the subject, on or after that date, of a possible reference under section 22, 33, 45 or 62 of that Act.

(3) Sub-paragraph (2) is without prejudice to the generality of sub-paragraph (1).

(4) This paragraph is subject to paragraphs 4 to 7 and 16.

#### **Commencement Information**

**II** Sch. para. 3 in force at made date

#### **Investigation powers**

**4.—**(1) The amendments made by section 29 of the Act (investigation powers) do not apply in relation to any notice given before the commencement date under section 109 of the 2002 Act<sup>(1)</sup>.

(2) The amendments made by paragraphs 16 to 20, 21(3) to (5), (6)(a) and (8) to (10), 23, 24, 26, 28, 29 and 35 of Schedule 15 to the Act (other amendments in relation to investigation powers)

(1) Section 109 was amended by section 29 of and paragraph 143 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c.24).

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do not apply in relation to any notice given before the commencement date under section 31, 34B, 46C or (as the case may be) 99(2) of the 2002 Act(2).

#### Commencement Information

**I2** Sch. para. 4 in force at made date

#### Undertakings and orders

**5.—(1)** The amendments made by section 30(1) of, and paragraphs 2(5) to (7) and 4(2) of Schedule 7 to, the Act (initial and interim undertakings) do not apply in relation to undertakings accepted under section 71 of, or paragraph 1 of Schedule 7 to, the 2002 Act(3) before the commencement date.

(2) In their continued application by virtue of sub-paragraph (1)—

- (a) section 71 of the 2002 Act has effect as if there were no power under that section for an undertaking under that section to be varied or superseded,
- (b) section 80(4) of that Act continues to permit the varying or superseding of an undertaking under section 71 which has been adopted under section 80(3)(4), and
- (c) paragraph 1 of Schedule 7 to that Act has effect as if there were no power under that paragraph for an undertaking accepted or adopted under that paragraph to be varied or superseded.

(3) The amendments made by paragraphs 3(5) to (7) and 4(5) of Schedule 7 to the Act (interim orders) do not apply in relation to orders adopted before the commencement date.

(4) The amendments made by section 31 of the Act (financial penalties in relation to interim measures) do not apply in relation to a failure to comply which—

- (a) occurs before the commencement date, and
- (b) does not continue on or after it,

but otherwise do apply in relation to undertakings accepted, or orders made, before that date.

#### Commencement Information

**I3** Sch. para. 5 in force at made date

#### Time-limits: general

**6.—(1)** The amendments made by paragraphs 2 to 4 and 7 to 12 of Schedule 8 to the Act (time-limits) do not apply in relation to any possible reference under section 22 or 33 of the 2002 Act(5) which is active before the commencement date.

- (2) Section 31 was repealed by paragraph 17 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013. Sections 34B and 46C were inserted by paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079) and repealed by paragraph 20 and 24 respectively of Schedule 15 to the Enterprise and Regulatory Reform Act 2013. Section 99 was amended by paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 and paragraph 133 of Schedule 5, paragraph 10 of Schedule 8 and paragraph 35 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.
- (3) Section 71 and paragraph 1 of Schedule 7 were repealed by section 30 of and paragraph 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013 respectively.
- (4) Section 80 was amended by paragraph 120 of Schedule 5 and paragraphs 2 and 3 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013.
- (5) 2002 c.40. Section 22 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003 (c.21), paragraph 67 of Schedule 5 and paragraph 2 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 (c.24) and paragraph 2

(2) For the purposes of this paragraph, a possible reference is active before the commencement date if (and only if) condition A, B, or C is met.

(3) Condition A is that, before the commencement date, the OFT—

(a) has not received a merger notice under section 96 of the 2002 Act(6) in relation to the subject-matter of the reference,

(b) either—

(i) has notified any relevant person that it has received a satisfactory submission for the purpose of considering whether to make the reference, or

(ii) has received the case from the European Commission as mentioned in section 34A(1) of that Act(7), and

(c) has neither made the reference nor decided not to make it.

(4) Condition B is that, before the commencement date—

(a) the OFT has received a merger notice under section 96 of the 2002 Act in relation to the subject-matter of the reference,

(b) the period under section 97 of that Act(8) for considering the notice has not expired,

(c) the notice has not been rejected under section 99(5) of that Act(9) or withdrawn, and

(d) the OFT has neither made the reference nor decided not to make it.

(5) Condition C is that, before the commencement date—

(a) the OFT has received a merger notice under section 96 of the 2002 Act in relation to the subject-matter of the reference,

(b) the notice has been rejected under section 99(5) of that Act or withdrawn,

(c) the OFT has subsequently notified any relevant person that it has received a satisfactory submission for the purpose of considering whether to make the reference, and

(d) the OFT has neither made the reference nor decided not to make it.

(6) In its application, on or after the commencement date, to any possible reference under section 22 or 33 of the 2002 Act which is active before that date, section 97 of that Act has effect as if, for subsections (5) and (6), there were substituted—

“(5) The CMA may by notice to the person who gave the merger notice extend the period for considering a merger notice if it considers that the person has failed (with or without reasonable excuse) to comply with any requirement of a notice under section 109 or (before, on or after the commencement date) with a notice given before that date under section 99(2).

(6) An extension under subsection (5) shall end—

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of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 (S.I.2004/1079). Section 33 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003, paragraph 72 of Schedule 5 and paragraph 3 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 and paragraph 1 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004.

(6) Section 96 was amended by paragraph 132 of Schedule 5 and paragraph 8 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

(7) Section 34A was inserted by paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 and amended by article 4 of the Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043) and paragraph 73 of Schedule 5 and paragraph 19 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

(8) Section 97 was amended by paragraph 2 of the Schedule to the Merger Control (Consequential Amendments) Regulations 2004 and repealed by paragraph 9 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

(9) Section 99 was amended by paragraph 2 of the Schedule to the Merger Control (Consequential Amendments) Regulations 2004 and paragraph 133 of Schedule 5, paragraph 10 of Schedule 8 and paragraph 35 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

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- (a) when the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
- (b) if earlier, when the CMA cancels the extension.”

(7) In its application, on or after the commencement date, to any possible reference under section 22 or 33 of the 2002 Act which is active before that date, subsection (2) of section 98 of that Act<sup>(10)</sup> has effect as if, for that subsection, there were substituted—

“(2) A notice under section 97(5)—

- (a) shall also be given within 5 days of—
  - (i) the end of the period within which the information is to be provided and which is stated in the notice under section 99(2)<sup>(11)</sup>; or
  - (ii) the date for compliance with a notice served under section 109; and
- (b) shall also inform the person who gave the merger notice of—
  - (i) the CMA’s opinion as mentioned in section 97(5) (in the case of a notice under section 99(2)) or the permitted purpose included in the notice in accordance with section 109(4) (in the case of a notice under section 109); and
  - (ii) the CMA’s intention to extend the period for considering the merger notice.”

(8) In its application, on or after the commencement date, to any possible reference under section 22 or 33 of the 2002 Act which is active before that date, section 110B of that Act has effect as if—

- (a) for subsection (1)(d) there were substituted—

“(d) the making of the reference is prevented by section 96(3);”,
- (b) subsection (1)(f) and (2)(f) were omitted, and
- (c) in subsection (2)(d), for the words “the expiry of the initial period” there were substituted “the time when the reference becomes prevented”.

(9) The amendments made by paragraph 7 of Schedule 8 to the Act (time-limits for consideration of undertakings in lieu of references) do not apply in relation to any case received, on or after the commencement date, by the CMA from the European Commission as mentioned in section 34A(1) of the 2002 Act where the European Commission’s decision or deemed decision (whenever made) relates to—

- (a) a notification, under Article 4(1) of the EU Merger Regulation, which is made before the commencement date, or
- (b) a request, under Article 4(4) of that Regulation, which is made before that date.

(10) In this paragraph—

“EU Merger Regulation” means Council Regulation (EC) No. 139/2004<sup>(12)</sup> of 20th January 2004 on the control of concentrations between undertakings;

“relevant person” means any person carrying on an enterprise to which the possible reference relates and which has or might have ceased, or (as the case may be) would or might cease, to be distinct (within the meaning of section 26 of the 2002 Act).

<sup>(10)</sup> Section 98 was repealed by paragraph 9 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

<sup>(11)</sup> Section 99(2) was repealed by paragraph 35 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

<sup>(12)</sup> OJ No L24, 29.1.2004, p1.

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**Commencement Information**

**I4** Sch. para. 6 in force at made date

**Time-limits for duty to remedy adverse effects**

7. The amendments made by paragraph 6 of Schedule 8 to the Act (time-limits for remedying adverse effects) do not apply in relation to a report of the Commission—

- (a) of the kind mentioned in section 41(1) of the 2002 Act<sup>(13)</sup>, and
- (b) published before the commencement date.

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**Commencement Information**

**I5** Sch. para. 7 in force at made date

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<sup>(13)</sup> Section 41 was amended by paragraph 81 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

**Changes to legislation:**

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