

*This Statutory Instrument has been printed in substitution of the SI of the same number and is being issued free of charge to all known recipients of that Statutory Instrument.*

*Regulations made by the Secretary of State, laid before Parliament under paragraph 5(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament within 28 days beginning with the day on which the Regulations were made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.*

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S T A T U T O R Y   I N S T R U M E N T S

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**2019 No. 1245**

**EXITING THE EUROPEAN UNION**

**COMPETITION**

**The Competition (Amendment etc.) (EU Exit) (No. 2)  
Regulations 2019**

*Made - - - - at 11.50 a.m. on 9th September 2019*

*Laid before Parliament at 3.00 p.m. on 9th September 2019*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

The Secretary of State is of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament(b).

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(a) 2018 c. 16.

(b) Paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 allows an instrument to be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Minister of the Crown concerned is of the opinion that, by reason of urgency, it is necessary to make the regulations without a draft being so laid and approved; regulations made in this way cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is laid unless, during that period (as extended by prorogation etc.), the instrument is approved by a resolution of each House of Parliament (see paragraphs 5(4) and (5) of Schedule 7).

## PART 1

### Introduction

#### **Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Competition (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and come into force immediately before exit day.

(2) An amendment, repeal or revocation made by these Regulations has the same extent as the provision to which it relates.

(3) In these Regulations “the 2019 Regulations” means the Competition (Amendment etc.) (EU Exit) Regulations 2019(a).

## PART 2

### Amendment of Part 2 of the 2019 Regulations: amendment of the Competition Act 1998

2. Part 2 of the 2019 Regulations is amended as follows.

3. After regulation 8, insert—

“**8A.** After section 31F(b) insert—

*“Retained EU anti-trust commitments*

#### **31G Retained EU anti-trust commitments**

(1) Retained EU anti-trust commitments are to be treated for the purposes of this Part as accepted by the CMA.

(2) In this Part—

“the 2019 Regulations” means the Competition (Amendment etc.) (EU Exit) Regulations 2019;

“relevant retained decision” means an EU decision falling within paragraph 2(1)(c) or (e) of Schedule 3 to the 2019 Regulations;

“retained EU anti-trust commitment” means a commitment which is comprised in a relevant retained decision, except a commitment which is revoked by paragraph 2A of Schedule 3 to the 2019 Regulations, and includes—

(a) any other provision contained in the relevant retained decision if, or to the extent that, it relates to the commitment, and

(b) any decisions or approvals if, or to the extent that, they are made under, or relate to, the commitment;

and in paragraph (a) “other provision” includes obligations or conditions, procedural provision, and enforcement provision.

(3) References in this Part to a retained EU anti-trust commitment include a commitment which has been substituted in accordance with section 31I(1)(b).

#### **31H Effect of retained EU anti-trust commitments**

(1) Subsection (2) applies if a retained EU anti-trust commitment is in force and has not been released by the CMA.

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(a) S.I. 2019/93, as amended by S.I. 2019/685.

(b) Section 31F was inserted by section 45 of the Enterprise and Regulatory Reform Act 2013 (c.24).

(2) In such a case, the CMA must not—

- (a) begin an investigation under section 25,
- (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 to which the retained EU anti-trust commitment relates (but this subsection is subject to subsections (3), (4) and (5)).

(3) Nothing in subsection (2) prevents the CMA from taking any action in relation to competition concerns which are not addressed by retained EU anti-trust commitments accepted by it.

(4) Subsection (2) also does not prevent the CMA from beginning an 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 relevant retained decision comprising the retained EU anti-trust commitment was made,
- (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the retained EU anti-trust commitment, or
- (c) it has reasonable grounds for suspecting that information which led to the making of the relevant retained decision comprising the retained EU anti-trust commitment was incomplete, false or misleading in a material particular.

(5) Subsection (2)(a) does not prevent the CMA from beginning an investigation where it has reasonable grounds to suspect that competition concerns will arise on expiry of the retained EU anti-trust commitment.

(6) If, pursuant to subsection (4), the CMA begins an investigation and—

- (a) makes a decision, or
- (b) gives a direction,

the retained EU anti-trust commitment is to be treated as released from the date of that decision or direction.

(7) Nothing in this section affects any investigation under section 25 begun by the CMA before exit day.

### **31I Variation, substitution or release of retained EU anti-trust commitments**

(1) At any time when retained EU anti-trust commitments are in force the CMA 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.

(2) Retained EU anti-trust commitments may be released by the CMA where—

- (a) it is requested to do so by the person (or persons) who gave the commitments; or
- (b) it has reasonable grounds for believing the commitments are no longer necessary.

(3) The provisions of Schedule 6A to this Act have effect with respect to procedural requirements for the variation and release of, and acceptance of commitments in substitution for, retained EU anti-trust commitments under this section.

### **31J Review of retained EU anti-trust commitments**

(1) Where the CMA is reviewing or has reviewed the effectiveness of retained EU anti-trust commitments it must, if requested to do so by the Secretary of State, prepare a report of its findings.

(2) The CMA must—

- (a) give any report prepared by it under subsection (1) to the Secretary of State; and
- (b) publish the report.

### **31K Enforcement of retained EU anti-trust commitments**

(1) If a person from whom the CMA has accepted retained EU anti-trust commitments fails without reasonable excuse to adhere to the terms of the commitments (and has not been released from them), the CMA may apply to the court for an order—

- (a) requiring the defaulter to make good their 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”.

### **31L Information relating to retained EU anti-trust commitments**

(1) For the purposes of considering whether a retained EU anti-trust commitment should be varied, substituted or released in accordance with section 31I, the CMA may require the person who gave the commitment to produce to it a specified document, or to provide it with specified information which it considers relates to any matter relevant to the consideration.

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

(3) A notice under subsection (2) must indicate the subject matter and purpose of the consideration.

(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 CMA 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 that person, or any person who is a present or past officer of, or is or was at any time employed by, that person, to provide an explanation of the document;

- (b) if the document is not produced, to require that person to state, to the best of their knowledge and belief, where it is.”.”.

4. After regulation 13, insert—

“**13A.** In section 40A(1)(a), for “28 or 28A” substitute “28, 28A or 31L”.”.

5. In regulation 14, after paragraph (c), insert—

“(d) after paragraph (h) insert—

“(ha) not releasing retained EU anti-trust commitments pursuant to a request made under section 31I(2)(a),

(hb) releasing retained EU anti-trust commitments under section 31I(2)(b),” .”.

6. For regulation 15, substitute—

“**15.** In section 47(1)(b)—

(a) in paragraph (a), for “paragraphs (a) to (f)” substitute “paragraph (a), (c), or (e)”;

(b) after paragraph (c), insert—

“(ca) a decision of the CMA to release retained EU anti-trust commitments under section 31I, or to accept a variation or substitution of such retained EU anti-trust commitments other than a variation which is not material in any respect;”.”.

7. After regulation 29 insert—

“**29A.**—(1) Schedule 6A(c) is amended as follows.

(2) After paragraph 1, insert—

“**1A.** Paragraph 2 also applies where the CMA proposes to accept any variation or substitution of retained EU anti-trust commitments under section 31I, other than a variation which is not material in any respect.”.

(3) In paragraph 7, after “under section 31A”, insert “, or a variation under section 31I,”

(4) After paragraph 14 insert—

### “PART 3

#### PROCEDURAL REQUIREMENTS FOR THE RELEASE OF RETAINED EU ANTI-TRUST COMMITMENTS

**15.** Paragraph 16 applies where the CMA proposes to release any retained EU anti-trust commitments under section 31I.

**16.**—(1) Before releasing the commitments, the CMA must—

- (a) give notice under this paragraph;
- (b) send a copy of the notice to the person (or persons) who gave the retained EU anti-trust commitments; and
- (c) consider any representations made in accordance with the notice and not withdrawn.

(2) A notice under this paragraph must state—

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(a) Section 40A was inserted by section 40(2) of the Enterprise and Regulatory Reform Act 2013 (c. 24)  
(b) Section 47(1) was first substituted by section 17 of the Enterprise Act 2002 (c. 40), further substituted by S.I. 2004/1261, and subsequently amended by paragraphs 1 and 27 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013,  
(c) Schedule 6A was inserted by regulation 4 of, and paragraph 52 of Schedule 1 to, S.I. 2004/1261 and subsequently amended by section 26(3) and paragraphs 1 and 56 in Part 1 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (a) the fact that a release is proposed;
  - (b) the reasons for it; and
  - (c) the period within which the 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.
- 17.** If after giving notice under paragraph 16 the CMA 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 retained EU anti-trust commitments.
- 18.** As soon as practicable after releasing the retained EU anti-trust commitments, the CMA 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 retained EU anti-trust commitments.
- 19.** A notice under paragraph 16 or 17 must be given by—
- (a) sending a copy of the notice to such other person or persons as the CMA considers appropriate for the purpose of bringing the matter to the attention of those likely to be affected by it; or
  - (b) publishing the notice in such manner as the CMA 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 3

### Amendment of Part 3 of the 2019 Regulations: amendment of the Enterprise Act 2002

**8.** Part 3 of the 2019 Regulations is amended as follows.

**9.** After regulation 48 insert—

“**48A.** After section 84(a) insert—

*“Retained EU Merger Commitments*

**84A Retained EU merger commitments**

- (1) Retained EU merger commitments are to be treated for the purposes of this Chapter as accepted by the CMA.
- (2) A retained EU merger commitment—
  - (a) may be varied or superseded by another commitment; and
  - (b) may be released by the CMA.
- (3) The provision which may be contained in a variation of a retained EU merger commitment or in a commitment which supersedes a retained EU merger commitment is not limited to the provision which is permitted by Schedule 8.

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(a) Section 84 of the Enterprise Act 2002 (c. 40) was amended by paragraphs 59 and 124 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

(4) A retained EU merger commitment ceases to be in force if an order under section 84C comes into force in relation to the subject-matter of the retained EU merger commitment.

(5) The CMA must, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing a retained EU merger commitment under this section.

(6) In this Part—

“the 2019 Regulations” means the Competition (Amendment etc.) (EU Exit) Regulations 2019;

“retained EU merger commitment” means a commitment which is comprised in a retained EU merger decision, except a commitment which is revoked by paragraph 2A of Schedule 3 to the 2019 Regulations and includes—

- (a) any other provision contained in the relevant retained decision if, or to the extent that, it relates to the commitment, and
- (b) any decisions or approvals if, or to the extent that, they are made under, or relate to, the commitment;

and in paragraph (a) “other provision” includes obligations or conditions, procedural provision, and enforcement provision;

“retained EU merger decision” means an EU decision falling within paragraph 2(1)(b) or (d) of Schedule 3 to the 2019 Regulations.

(7) References in this Part to a retained EU merger commitment include a commitment which supersedes a retained EU merger commitment.

#### **84B Power of directions in connection with retained EU merger commitments**

(1) For the purpose of ensuring compliance with a retained EU merger commitment, the CMA may give directions falling within subsection (2) to—

- (a) a person specified in the directions; or
- (b) the holder for the time being of an office so specified in any body of persons corporate or unincorporate.

(2) Directions fall within this subsection if they are directions—

- (a) to take such action as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, the retained EU merger commitment concerned; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by that commitment to do or refrain from doing.

(3) The CMA may vary or revoke any directions so given.

(4) A direction under this section may extend to a person’s conduct outside the United Kingdom if (and only if) the person is—

- (a) the person who gave the retained EU merger commitment concerned;
- (b) a United Kingdom national;
- (c) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
- (d) a person carrying on business in the United Kingdom.

(5) The court may by order require any person who has failed to comply with directions given under this section to comply with them, or otherwise remedy the failure, within such time as may be specified in the order.

(6) Where the directions related to anything done in the management or administration of a body of persons corporate or unincorporate, the court may by order require the body of persons concerned or any officer of it to comply with the

directions, or otherwise remedy the failure to comply with them, within such time as may be specified in the order.

(7) An order under subsection (5) or (6) is to be made on the application of the CMA.

(8) An order under subsection (5) or (6) may provide for all the costs or expenses of, or incidental to, the application for the order to be met by any person in default or by any officers of a body of persons corporate or unincorporate who are responsible for its default.

(9) In this section “the court” means—

- (a) in relation to England and Wales or Northern Ireland, the High Court; and
- (b) in relation to Scotland, the Court of Session.

#### **84C Order-making power where retained EU merger commitments not fulfilled**

(1) Subsection (2) applies where the CMA considers that—

- (a) a retained EU merger commitment has not been, is not being or will not be fulfilled;
- (b) in relation to a retained EU merger commitment which has been varied or which supersedes a previous retained EU merger commitment, information which was false or misleading in a material respect was given to the CMA by the person giving the commitment before the CMA decided to accept the variation or new commitment (as the case may be); or
- (c) it has reasonable grounds for suspecting that information which led to the inclusion of a retained EU merger commitment in a retained EU merger decision was false or misleading in a material respect.

(2) The CMA may make an order under this section for the purpose of remedying, mitigating or preventing the competition concerns which the retained EU commitment concerned was intended to address.

(3) In proceeding under subsection (2), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the competition concerns.

(4) An order under this section may contain—

- (a) anything permitted by Schedule 8 (as modified by subsection (7)); and
- (b) such supplementary, consequential or incidental provision as the CMA considers appropriate.

(5) An order under this section—

- (a) comes into force at such time as is determined by or under the order;
- (b) may contain provision which is different from the provision contained in the retained EU merger commitment concerned; and
- (c) may be varied or revoked by another order.

(6) The CMA must, as soon as reasonably practicable, consider any representations received by it in relation to varying or revoking an order under this section.

(7) For the purposes of this section Schedule 8 applies with the following modifications—

- (a) paragraph 8(a) is to be read as if—
  - (i) in sub-paragraph (2), for the words from “relevant report” to the end there were substituted “retained EU merger decision which includes the

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(a) Paragraph 8 of Schedule 8 was amended by paragraphs 59 and 161 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.



retained EU merger commitment to which the order relates identifies that a commitment is required in relation to the prices charged for the goods or services”; and

(ii) sub-paragraph (3) were omitted;

(b) paragraph 14 is to be read as if after “84” there were inserted “, 84C”.”.

**48B.**—(1) Section 86 is amended follows.

(2) At the beginning insert—

“(A1) An enforcement order under section 84C may extend to a person’s conduct outside the United Kingdom if (and only if) the person is—

(a) the person who gave the commitment;

(b) a United Kingdom national;

(c) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or

(d) a person carrying on business in the United Kingdom.”.

(3) In subsection (1) for “An” substitute “Any other”.

(4) In subsection (6)—

(a) after “Part” insert “(unless otherwise provided)”;

(b) for “or 84” substitute “, 84 or 84C”.

(5) In the italic heading before section 86, after “undertakings” insert “, commitments”.

**48C.** In section 88(1), for “or 84” substitute “, 84 or 84C”.

**48D.**—(1) In section 90, after “undertakings” insert “or varying retained EU merger commitments”.

(2) In the heading to that section, after “undertakings” insert “, commitments”.

**48E.**—(1) Section 91(a) is amended as follows.

(2) In subsection (3)—

(a) after paragraph (b) insert—

“(ba) the provisions of any retained EU merger commitment;”;

(b) in paragraph (c), after “undertaking” insert “, commitment”.

(3) In the heading, after “undertakings” insert “, commitments”.

**48F.**—(1) Section 92(b) is amended as follows.

(2) At the beginning insert—

“(A1) This section applies to—

(a) enforcement undertakings, and

(b) enforcement orders other than orders under section 84C (for provision about the monitoring of orders under that section see section 92A).”.

(3) In the heading, for “orders” substitute “certain orders”.

**48G.** After section 92 insert—

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(a) Section 91 was amended by paragraphs 59 and 126 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c. 24).

(b) Section 92 was amended by paragraphs 59 and 128 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

**“92A Duty of CMA to monitor retained EU merger commitments and related enforcement orders**

(1) The CMA must keep under review the carrying out of any retained EU merger commitment or any enforcement order under section 84C.

(2) The CMA must, in particular, from time to time consider—

- (a) whether a retained EU merger commitment or an enforcement order under section 84C has been or is being complied with;
- (b) whether, by reason of any change of circumstances or for any other reason, a retained EU merger commitment is no longer appropriate and—
  - (i) one or more of the parties to it can be released from it; or
  - (ii) it needs to be varied or to be superseded by a new commitment;
- (c) whether, by reason of any change of circumstances, an enforcement order under section 84C is no longer appropriate and needs to be varied or revoked.

(3) The CMA must take such action as it considers appropriate in relation to—

- (a) any possible variation or release by it of a retained EU merger commitment;
- (b) any possible new commitment to be accepted by it so as to supersede a retained EU merger commitment;
- (c) any possible variation or revocation by it of an enforcement order under section 84C;
- (d) any possible enforcement order under section 84C to be made by it instead of a retained EU merger commitment;
- (e) the enforcement by it by virtue of section 95A(2) of a retained EU merger commitment; or
- (f) the enforcement by it by virtue of section 94(6) of an enforcement order under section 84C.

(4) The CMA must keep under review the effectiveness of retained EU merger commitments and of enforcement orders under section 84C.

(5) The CMA must, whenever requested to do so by the Secretary of State and otherwise from time to time, prepare a report of its findings under subsection (4).

(6) The CMA must—

- (a) give a copy of any report prepared by it under subsection (5) to the Secretary of State; and
- (b) publish the report.”.

**48H.** After section 95 insert—

**“95A Rights to enforce retained EU merger commitments**

(1) Any person to whom a retained EU merger commitment relates has a duty to comply with it.

(2) Compliance with a retained EU merger commitment is enforceable by civil proceedings brought by the CMA for an injunction or for interdict or for any other appropriate relief or remedy.

(3) The rights of the CMA under subsection (2) are not affected by any provisions of a retained EU merger commitment which provide for disputes relating to compliance with a commitment to be resolved by arbitration.

(4) This section does not affect any right that any person other than the CMA may have to bring civil proceedings for contravention or apprehended contravention of a retained EU merger commitment.”.

**10.** After regulation 50 insert—

**“50A.—**(1) Section 109(a) is amended as follows.

(2) In subsection (A1), after paragraph (b) insert—

“(c) assisting the CMA in carrying out any commitments enforcement functions.”.

(3) In subsection (8A)—

(a) in the words before paragraph (a), for “(A1)” substitute “(A1)(a) and (b)”;

(b) in paragraphs (a) and (b), for “enforcement orders”, in each place it occurs, substitute “relevant enforcement orders”.

(4) After subsection (8A) insert—

“(8B) In subsection (8A) “relevant enforcement order” means an order under section 72, 75, 76, 81, 83 or 84 or under paragraph 2, 5, 6, 10 or 11 of Schedule 7.

(8C) In subsection (A1)(c), “commitments enforcement functions” means—

(a) functions conferred on the CMA by section 84B or functions conferred by virtue of section 87 on the CMA by enforcement orders under section 84C;

(b) functions of the CMA in relation to the variation, supersession or release of retained EU merger commitments or the variation or revocation of enforcement orders made under section 84C;

(c) functions of the CMA under or by virtue of section 84C in relation to retained EU merger commitments;

(d) functions of the CMA under section 92A in relation to retained EU merger commitments or enforcement orders under section 84C.”.

**50B.—**(1) Section 110(b) is amended as follows.

(2) In subsection (2), before “The CMA” insert “If the notice is given for the permitted purpose under section 109(A1)(a) or (b),”.

(3) In subsection (9)—

(a) after “or 51(4)” insert “if the notice is given for the permitted purpose under section 109(A1)(a) or (b)”;

(b) for “that enactment” substitute “section 51(4)”.

**50C.—**(1) Section 110A(c) is amended as follows.

(2) In subsection (3), for “enforcement order” substitute “relevant enforcement order (within the meaning of that section)”.

(3) After subsection (3) insert—

“(3A) Where the section 109 power is exercised in connection with a commitments enforcement function (within the meaning of that section), the relevant day is the day when the retained EU merger commitment concerned is superseded or released or (as the case may be) the enforcement order under section 84C concerned is revoked.”.

(3) In subsection (4), after “(3)” insert “or (3A)”.

**11.** After regulation 51 insert—

**“51A.—**(1) Section 120(d) is amended as follows.

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- (a) Section 109 was amended by section 29 of, paragraphs 59 and 143 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 and by S.I. 2014/892 .
- (b) Section 110 was amended by paragraphs 59 and 144 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 110 but it is not relevant to these Regulations.
- (c) Section 110A was inserted by section 29 of the Enterprise and Regulatory Reform Act 2013.
- (d) Section 120 was amended by paragraph 22 of Schedule 16 to the Communications Act 2003 (c. 21) and section 31 of, and paragraphs 59 and 155 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

(2) In subsection (1), for the words from “of the CMA” to “special merger situation” substitute “referred to in subsection (1A)”.

(3) After subsection (1) insert—

“(1A) The decisions referred to in this section are—

- (a) a decision of the CMA, OFCOM or the Secretary of State under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation;
- (b) a decision of the CMA in connection with a retained EU merger commitment or an enforcement order under section 84C.”.

(4) In subsection (2), in paragraph (b)—

- (a) the words “a reference or possible reference” become sub-paragraph (i) of that paragraph, and
- (b) after that sub-paragraph insert—
  - “or
  - (ii) a retained EU merger commitment or an enforcement order under section 84C.”.

12. In regulation 55, after paragraph (c) insert—

“(d) in the appropriate place insert—

“Retained EU merger commitment	Section 84A(6)
Retained EU merger decision	Section 84A(6)”.

13. After regulation 59 insert—

“59A.—(1) Schedule 10 is amended as follows.

(2) In the heading to Schedule 10, after “UNDERTAKINGS” insert “, COMMITMENTS”.

(3) In the italic heading before paragraph 1, after “undertakings” insert “and commitments”.

(4) In paragraph 1—

- (a) omit the “and” at the end of sub-paragraph (a);
- (b) after sub-paragraph (a) insert—
  - “(aa) any commitment which varies or supersedes a retained EU merger commitment under section 84A (but does not apply to such a commitment which falls within paragraph 1A); and”;
- (c) in sub-paragraph (b), for “or 84” substitute “, 84 or 84C”.

(5) After paragraph 1 insert—

“1A. A commitment falls within this paragraph if—

- (a) it does not vary the retained EU merger commitment in any material respect; or
- (b) it only extends a time limit or time limits specified in the retained EU merger commitment.”.

(6) In paragraph 2(1)(a)—

- (a) in the words before paragraph (a), after “an undertaking” insert “or commitment”;
- (b) in paragraph (a), after “proposed undertaking” insert “, commitment”.

(7) In paragraph 2(2)—

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(a) Paragraph 2 was amended by paragraphs 59 and 162 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

- (a) in paragraph (a), after “undertaking” insert “or commitment”;
  - (b) paragraphs (b) and (c), after “undertaking”, in both places, insert “, commitment”;
  - (c) in paragraph (d), after “undertaking” insert “or commitment”;
  - (d) in paragraph (e), after “undertaking” insert “, commitment”;
  - (e) in paragraph (f)—
    - (i) after “an undertaking” insert “or commitment”;
    - (ii) after “proposed undertaking” insert “, commitment”.
- (8) In paragraphs 2(4) and 3(1), after “undertaking”, in both places, insert “or commitment”.
- (9) In paragraph 4—
- (a) in the words before sub-paragraph (a) and in sub-paragraph (a), after “undertaking”, in both places, insert “or commitment”;
  - (b) in sub-paragraph (b), after “undertaking” insert “, commitment”.
- (10) In paragraph 5(1), in paragraph (a), after “undertaking” insert “, commitment”.
- (11) In the italic heading before paragraph 6, after “undertakings” insert “, commitments”.
- (12) In paragraph 6—
- (a) omit the “or” at the end of sub-paragraph (a);
  - (b) after sub-paragraph (a) insert—
    - “(aa) release a retained EU merger commitment under section 84A (other than in connection with accepting a commitment which varies or supersedes a retained EU merger commitment); or”;
  - (c) in sub-paragraph (b), for “or 84” substitute “, 84 or 84C”.
- (13) In paragraphs 7 and 8, after “undertaking”, in each place it occurs, insert “or commitment”.

## PART 4

### Amendment of Part 4 of the 2019 Regulations

**14.** Part 4 of the 2019 Regulations is amended as follows.

#### **Amendment of Schedule 1: amendment of other primary legislation**

**15.** Schedule 1 is amended as follows.

**16.** Before paragraph 1 and the heading to that paragraph (but after the heading “Amendment of other primary legislation”) insert—

#### **“Registered Designs Act 1949**

**A1.**—(1) Section 11AB of the Registered Designs Act 1949(a) is amended as follows.

(2) In subsection (1)—

- (a) after “83(2),” insert “84C(2),”;
- (b) after “investigations” insert “, or in respect of retained EU merger commitments”.

(3) In subsection (6)(a), after “75(2)” insert “or 84C(2)”.

---

(a) 1949 c. 88; section 11AB was inserted by paragraph 1 of Schedule 25 to the Enterprise Act 2002 and amended by S.I. 2014/892.

(4) In subsection (8), after “92(1)(a),” insert “92A(1),”.

(5) In the heading after “investigations” insert “or in respect of retained EU merger commitments”.

### **Patents Act 1977**

**B1.**—(1) Section 50A of the Patents Act 1977(**a**) is amended as follows.

(2) In subsection (1)—

(a) after “83(2),” insert “84C(2),”;

(b) after “investigations” insert “, or in respect of retained EU merger commitments”.

(3) In subsection (5)(a), after “75(2)” insert “or 84C(2)”.

(4) In subsection (7), after “92(1)(a),” insert “92A(1),”.

(5) In the heading after “investigations” insert “or in respect of retained EU merger commitments”.

### **Competition Act 1980**

**C1.**—(1) Section 11B(1A)(**b**) of the Competition Act 1980 is amended as follows.

(2) In paragraph (a)—

(a) for “paragraphs (a) and (b)” substitute “paragraphs (a) to (c)”;

(b) omit the “and” at the end.

(3) After paragraph (b), insert—

“, and

(c) subsections (8B) and (8C) were omitted.”.

17. For paragraph 2 substitute—

### **“Gas Act 1986**

**2.**—(1) The Gas Act 1986(**c**) is amended as follows.

(2) In section 27(1ZA)(**d**)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the carrying on of activities authorised or regulated by a licence at the time the commitment was given; or”.

(3) In section 36A(3)(**e**)—

(a) at the end of paragraph (a), insert “or”;

(b) omit paragraphs (c) and (d).

---

(a) 1977 c. 37; section 50A was inserted by paragraph 8 of Schedule 25 to the Enterprise Act 2002 and amended by S.I. 2014/892.

(b) 1980 c. 21; section 11B was inserted by paragraph 10 of Schedule 25 to the Enterprise Act 2002 and amended by S.I. 2014/892.

(c) 1986 c. 46.

(d) Subsections (1) and (1ZA) of section 27 were substituted for subsection (1) as originally enacted by paragraph 4 of Schedule 9 to the Enterprise Act 2002 and subsequently amended by paragraphs 15 and 22 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013 and S.I. 2014/892.

(e) Section 36A was inserted by paragraph 43 of Schedule 3 to the Gas Act 1995 (c. 45); subsection (3) was substituted by section 54(2) and paragraph 3(5) of Schedule 10 to the Competition Act 1998, further substituted by S.I. 2004/1261, and subsequently amended by paragraph 2 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2014/892.

(4) In section 41EB(1A)(b)(a), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

**18.** After paragraph 2 insert—

**“Copyright, Designs and Patents Act 1988**

**2A.**—(1) The Copyright, Designs and Patents Act 1988(b) is amended as follows.

(2) In the italic heading before section 144(c), after “report” insert “or in respect of retained EU merger commitments”.

(3) In section 144—

(a) in subsection (1)—

(i) after “83(2),” insert “84C(2),”;

(ii) after “investigations” insert “, or in respect of retained EU merger commitments”;

(b) in subsection (2), after “84(2)(a),” insert “84C(4),”;

(c) in the heading after “Authority” insert “or in respect of retained EU merger commitments”.

(4) In section 238(d)—

(a) in subsection (1)—

(i) after “83(2),” insert “84C(2),”;

(ii) after “investigations etc” insert “, or in respect of retained EU merger commitments”;

(b) in subsection (2), after “84(2)(a),” insert “84C(4),”.

(5) In paragraph 17 of Schedule 2A(e)—

(a) in subsection (1)—

(i) after “83(2),” insert “84C(2),”;

(ii) after “investigations etc” insert “, or in respect of retained EU merger commitments”;

(b) in subsection (2), after “84(2)(a),” insert “84C(4),”;

(c) in the heading after “report” insert “or in respect of retained EU merger commitments”.

**19.** For paragraph 3 substitute—

**“Electricity Act 1989**

**3.**—(1) The Electricity Act 1989(f) is amended as follows.

(2) In section 15(2)(g)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

- 
- (a) Section 41EB was inserted by paragraph 15 of Schedule 25 to the Enterprise Act 2002; subsection (1A) was subsequently inserted by S.I. 2014/892.
- (b) 1988 c 48.
- (c) Subsections (1), (1A) and (2) of section 144 were substituted for subsections (1) and (2) as originally enacted by paragraph 18 of Schedule 25 to the Enterprise Act 2002 and subsequently amended by S.I. 2014/892.
- (d) Subsections (1), (1A) and (2) of section 238 were substituted for subsections (1) and (2) as originally enacted by paragraph 18 of Schedule 25 to the Enterprise Act 2002 and subsequently amended by S.I. 2014/892.
- (e) Schedule 2A was inserted by S.I. 1996/2967 and paragraph 17 was subsequently amended by paragraph 18 of Schedule 25 to the Enterprise Act 2002 and S.I. 2014/892.
- (f) 1989 c. 29.
- (g) Subsection (2) of section 15 was substituted by paragraph 5 of Schedule 9 to the Enterprise Act 2002.

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the carrying on of activities authorised or regulated by a licence at the time the commitment was given; or”.

(3) In section 43(3)(a)—

(a) at the end of paragraph (a), insert “or”;

(b) omit paragraphs (c) and (d).

(4) In section 56CB(1A)(b)(b), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

**20.** After paragraph 3 insert—

**“Broadcasting Act 1990**

**3A.**—(1) Section 193 of the Broadcasting Act 1990(c) is amended as follows.

(2) In subsection (2)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the provision of programmes for broadcasting in regional Channel 3 services at the time the commitment was given; or”.

**21.** For paragraph 4 substitute—

**“Water Industry Act 1991**

**4.**—(1) The Water Industry Act 1991(d) is amended as follows.

(2) In section 14B(1A)(b)(e), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(3) In section 16B(6A)(b)(f), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(4) In section 17(2)(g)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) an order under section 84C of the 2002 Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was a relevant undertaker at the time the commitment was given; or”.

(5) In section 17M(1A)(b)(h), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

---

(a) Section 43(3) was substituted by section 54(2) and paragraph 4 of Schedule 10 to the Competition Act 1998, further substituted by S.I. 2004/1261, and subsequently amended by section 147(1) and (5) of the Energy Act 2004 (c. 20), paragraph 3 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2012/1809 and S.I. 2014/892.

(b) Section 56CB was inserted by paragraph 20 of Schedule 25 to the Enterprise Act 2002; subsection (1A) was subsequently inserted by S.I. 2014/892.

(c) 1990 c. 42; section 193 was amended by paragraph 6 of Schedule 9 to the Enterprise Act 2002, paragraph 65 of Schedule 15 to the Communications Act 2003 and by SI 2014/892.

(d) 1991 c. 56.

(e) Section 14B was inserted by paragraph 25 of Schedule 25 to the Enterprise Act 2002; subsection (1A) was subsequently inserted by S.I. 2014/892.

(f) Section 16B was inserted by section 55 of the Water Act 2003 (c. 37); subsection (1A) was subsequently inserted by S.I. 2014/892.

(g) Subsection (2) of section 17 was substituted by paragraph 7 of Schedule 9 to the Enterprise Act 2002.

(h) Section 17M was inserted by paragraphs 1 and 2 of Schedule 4 to the Water Act 2003; subsection (1A) was subsequently inserted by S.I. 2014/892.



(6) In section 17Q(6A)(b)(a), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(7) In section 17R(2)(b)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the carrying on of activities authorised or regulated by a water supply licence or sewerage licence at the time the commitment was given; or”.

(8) In section 31(3)(c)—

(a) at the end of paragraph (a), insert “or”;

(b) omit paragraphs (c) and (d)”.

**22.** For paragraph 5 substitute—

#### **“Electricity (Northern Ireland) Order 1992**

**5.—**(1) The Electricity (Northern Ireland) Order 1992(**d**) is amended as follows.

(2) In Article 18(2)(e)—

(a) omit the “or” at the end of sub-paragraph (a);

(b) after sub-paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the carrying on of activities authorised or regulated by a licence at the time the commitment was given; or”.

(3) In Article 46(3)(f)—

(a) at the end of sub-paragraph (a), insert “or”;

(b) omit sub-paragraphs (c) and (d)”.

**23.** For paragraph 6 substitute—

#### **“Railways Act 1993**

**6.—**(1) The Railways Act 1993(**g**) is amended as follows.

(2) In section 13B(1A)(b)(h), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

- 
- (a) Section 17Q was inserted by paragraphs 1 and 2 of Schedule 4 to the Water Act 2003; subsection (6A) was subsequently inserted by S.I. 2014/892.
- (b) Section 17R was inserted by paragraphs 1 and 2 of Schedule 4 to the Water Act 2003 and subsection (2) was subsequently amended by paragraphs 2 and 25 of Schedule 7 to the Water Act 2014; there is another amendment to section 17R(2) but it is not relevant to these Regulations.
- (c) Section 31(3) was substituted by S.I. 2004/1261 and subsequently amended by section 36(3) of the Water Act 2003, paragraphs 4 and 5 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013, and by S.I. 2012/1809 and S.I. 2014/892.
- (d) S.I. 1992/231 (N.I. 1).
- (e) Article 18 was amended by paragraph 9 of Schedule 9 to the Enterprise Act 2002 and paragraph 156 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013; there are other amendments to article 18 but none is relevant to these Regulations.
- (f) Relevant amending instruments are S.I. 2004/1261, 2014/892, S.R. 2011 No. 155, and paragraph 53 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.
- (g) 1993 c. 43.
- (h) Section 13B was inserted by paragraph 30 of Schedule 25 to the Enterprise Act 2002; subsection (1A) was subsequently inserted by S.I. 2014/892.

(3) In section 15C(2DA)(b)(a), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(4) In section 16(2)(b)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the supply of services relating to railways at the time the commitment was given; or”.

(6) In section 67(3)(c)—

(a) at the end of paragraph (a), insert “or”;

(b) omit paragraphs (c) and (d).

(7) In paragraph 10A(1A)(b) of Schedule 4A(d), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

**24.** For paragraph 7 substitute—

**“Gas (Northern Ireland) Order 1996**

**7.—(1)** The Gas (Northern Ireland) Order 1996(e) is amended as follows.

(2) In Article 18(1A)(f)—

(a) omit the “or” at the end of sub-paragraph (a);

(b) after sub-paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the carrying on of activities authorised or regulated by a licence at the time the commitment was given; or”.

(3) In Article 23(3)(g)—

(a) at the end of sub-paragraph (a), insert “or”;

(b) omit sub-paragraphs (c) and (d).”.

**25.** In paragraph 9, after sub-paragraph (1) insert—

“(1A) In section 12B(1A)(b)(h), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

- 
- (a) Section 15C was inserted by section 242 of the Transport Act 2000 (c. 38); subsections (1), (2) and (2A)–(2I) were substituted for subsections (1) and (2) as originally enacted by paragraph 30 of Schedule 25 to the Enterprise Act 2002 and subsection (2DA) was subsequently inserted by S.I. 2014/892.
- (b) Section 16 was amended by paragraph 10 of Schedule 9 to the Enterprise Act 2002, paragraphs 69 and 78 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013; there are other amendments to article 18 but none is relevant to these Regulations.
- (c) Subsection (3) and (3A) were substituted for subsection (3) as originally enacted by section 54(2) and paragraph 6(5) of Schedule 10 to the Competition Act 1998, further substituted by S.I. 2004/1261, and subsequently amended by paragraph 7 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013 and by S.I. 2012/1809, S.I. 2014/892 and S.I. 2015/1682.
- (d) Schedule 4A was inserted by Schedule 24 to the Transport Act 2000; paragraphs 10 and 10A were substituted for paragraph 10 as originally enacted by paragraph 30 of Schedule 25 to the Enterprise Act 2002 and sub-paragraph (1A) was subsequently inserted by S.I. 2014/892.
- (e) S.I. 1996/275 (N.I. 2).
- (f) Article 18 was amended by paragraph 13 of Schedule 9 to the Enterprise Act 2002 and paragraph 165 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013 and S.R. 2013/92; there are other amendments to article 18 but none is relevant to these Regulations.
- (g) Relevant amending instruments are S.I. 2004/1261, 2014/892 and paragraph 54 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.
- (h) 2000 c. 38; section 12B was inserted by paragraph 44 of Schedule 25 to the Enterprise Act 2002; subsection (1A) was subsequently inserted by S.I. 2014/892.

(1B) In section 18(6A)(b)(a), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(1C) In section 19(2)(b)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was engaged in the provision of air traffic services at the time the commitment was given; or”.

26. After paragraph 11 insert—

**“Energy (Northern Ireland) Order 2003**

**11A.**—(1) Schedule 2 to the Energy (Northern Ireland) Order 2003(c) is amended as follows.

(2) In paragraph 5(1A)(b)(d), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

27. For paragraph 12 substitute—

**“Water and Sewerage Services (Northern Ireland) Order 2006**

**12.**—(1) The Water and Sewerage Services (Northern Ireland) Order 2006(e) is amended as follows.

(2) In Article 23(1A)(b)(f), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(3) In Article 27(6A)(b)(g), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(4) In Article 29(3)(h)—

(a) at the end of sub-paragraph (a), insert “or”;

(b) omit sub-paragraphs (c) and (d).”.

28. For paragraph 13 substitute—

**“Health and Social Care Act 2012**

**13.**—(1) The Health and Social Care Act 2012(i) is amended as follows.

(2) In section 72(2), omit paragraphs (c) and (d).

(3) In section 102(4), after paragraph (b) insert—

“(ba) an order under section 84C of that Act made in relation to a retained EU merger commitment if one or more persons who gave the commitment was

- 
- (a) Section 18 was substituted by paragraph 44 of Schedule 25 to the Enterprise Act 2002; subsection (6A) was subsequently inserted by S.I. 2014/892.
- (b) Section 19 was amended by paragraph 15 of Schedule 9 to the Enterprise Act 2002, paragraphs 85 and 95 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013; there are other amendments to section 19 but none is relevant to these Regulations.
- (c) S.I. 2003/419 (N.I. 6).
- (d) Sub-paragraph (1A) was inserted by S.I. 2014/892.
- (e) S.I. 2006/3336 (N.I. 21).
- (f) Paragraph (1A) was inserted by S.I. 2014/892; there are other amendments to Article 23 but none is relevant.
- (g) Paragraph (6A) was inserted by S.I. 2014/892; there are other amendments to Article 23 but none is relevant.
- (h) Paragraph (3) was amended by S.I. 2014/892; there are other amendments to Article 23 but none is relevant.
- (i) 2012 c. 7.

engaged in the provision of health care services for the purposes of the NHS at the time the commitment was given;”.

(4) In paragraph 10(2A)(b)(a) of Schedule 10, for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

## PART 5

Amendment of Part 5 of the 2019 Regulations: amendment of subordinate legislation

29. Schedule 2 to the 2019 Regulations is amended as follows.

### Amendment of the Competition Act 1998 (Concurrency) Regulations 2014

30.—(1) Paragraph 5 is amended as follows.

(2) After sub-paragraph (1), insert—

“(1A) In regulation 2, in the definition of “prescribed functions”, after sub-paragraph (i) insert—

“(ia) any of the functions of the CMA under section 31I, section 31K and section 31L of the Act;”.

(3) After sub-paragraph (3) insert—

“(3A) After regulation 9(1)(c) insert—

“(ca) a draft of any varied or substituted retained EU anti-trust commitments which the competent person proposes to accept under section 31I (variation, substitution or release of retained EU anti-trust commitments) before those varied or substituted commitments are accepted;”.

### Amendment of Part 3 of Schedule 2: amendment of other subordinate legislation

31. In paragraph 12, after sub-paragraph (8) insert—

“(8A) In regulation 32—

(a) omit the “and” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) subsection (1A) were omitted; and”.

32. After paragraph 12 insert—

### “Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005

12A.—(1) The Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005(**b**) is amended as follows.

(2) In article 5(1A)(b), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

(3) In article 10(3A)(b), for “subsection (8A)” substitute “subsections (8A), (8B) and (8C)”.

---

(a) Sub-paragraph (2A) was inserted by S.I. 2014/892.

(b) S.I. 2005/3172, amended by S.I. 2014/892; there are other amending instruments but none is relevant.

**Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011**

**12B.**—(1) Article 4 of the Postal Services (Appeals to the Competition Commission) (Investigations and Extension of Time Limits) Order 2011(a) is amended as follows.

(2) In paragraph (2)(b), for “subsection (8A) is” substitute “subsections (8A), (8B) and (8C) are”.

**PART 6**

**Amendment of Part 6 of the 2019 Regulations: amendment of retained EU law**

**Amendment of retained EU law**

**33.** In regulation 63 of the 2019 Regulations, after paragraph (b) insert—

“(c) Part 3 amends certain retained EU commitments decisions (as defined in paragraph 11 of Schedule 3).”.

**Amendment of Schedule 3: amendment of retained direct EU legislation**

**34.**—(1) Schedule 3 to the 2019 Regulations is amended as follows.

(2) In paragraph 2—

- (a) the existing provision becomes sub-paragraph (1) of that paragraph;
- (b) in sub-paragraph (1), for the words from “with the exception of” to the end substitute—  
“with the exception of—
  - (a) EU regulations made by the European Commission under the EU regulations specified in paragraph 1(b), (c), and (h);
  - (b) the following EU decisions made by the European Commission under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings—
    - (i) Commission decision of 30.3.2012 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 in case M.6447 - IAG/BMI;
    - (ii) Commission decision of 21.09.2012 declaring a concentration to be compatible with the internal market and the EEA agreement in case M.6458 - Universal Music Group/EMI Music;
    - (iii) Commission decision of 6.11.2012 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 in case M.6564 - ARM/Giesecke & Devrient/Gemalto/JV;
    - (iv) Commission decision of 22.11.2012 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 in case M.6541 - Glencore/Xstrata;
    - (v) Commission decision of 05.8.2013 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 in case M.6607 - US Airways/American Airlines;
    - (vi) Commission decision of 3.10.2014 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 in case M.7220 Chiquita Brands International/Fyffes;

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(a) S.I. 2011/2749, amended by S.I. 2014/549.

- (vii) Commission decision of 19.12.2014 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.7337 IMS Health / Cegedim business;
- (viii) Commission decision of 16.6.2015 declaring a concentration to be compatible with the internal market and the EEA agreement in case M.6800 - PRSfM / STIM/GEMA/JV);
- (ix) Commission decision of 14.7.2015 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.7541 – IAG/Aer Lingus;
- (x) Commission decision of 25.2.2016 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.7822 - Dentsply/Sirona;
- (xi) Commission decision of 29.4.2016 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.7908 - CMA CGM/NOL;
- (xii) Commission decision of 20.7.2016 declaring a concentration to be compatible with the internal market and the EEA Agreement in case M.7724 - ASL/Arianespace;
- (xiii) Commission decision of 23.11.2016 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8120 - Hapag-Lloyd / United Arab Shipping Company;
- (xiv) Commission decision of 6.12.2016 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8124 – Microsoft / LinkedIn;
- (xv) Commission decision of 10.4.2017 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8330 - Maersk Line/HSDG;
- (xvi) Commission decision of 19.4.2017 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8242 - Rolls Royce/ITP;
- (xvii) Commission decision of 12.5.2017 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case - M.8314 Broadcom/Brocade;
- (xviii) Commission decision of 9.6.2017 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in Case M.8401 – Johnson & Johnson/Actelion;
- (xix) Commission decision of 4.5.2018 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8658 - UTC/Rockwell Collins;
- (xx) Commission decision of 06.11.2018 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the

- Agreement on the European Economic Area in case M.8785 - The Walt Disney Company/Twenty-First Century Fox;
- (xxi) Commission decision of 07.12.2018 pursuant to Article 6(1)(b) of Council Regulation No 139/2004 in case M.8832 - Knauf /Armstrong;
  - (xxii) Commission decision of 18.1.2019 declaring a concentration to be compatible with the internal market in case M.8674 BASF/Solvay's EP and P&I business;
  - (xxiii) Commission decision of 20.3.2019 pursuant to Article 6(1)(b) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8948 - Spirit/ASCO;
  - (xxiv) Commission decision of 20.11.2018 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8955 - Takeda/Shire;
  - (xxv) Commission decision of 29.11.2018 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.8951 - Suzano Papel e Celulose/Fibria Celulose;
  - (xxvi) Commission decision of 11.12.2018 pursuant to Article 6(1)(b) of Council Regulation 139/2004 in case M.8988 - Energizer/Spectrum Brands (Battery and Portable Lighting business);
  - (xxvii) Commission decision of 22.3.2019 pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.9196 - Marsh & McLennan Companies/Jardine Lloyd Thompson Group;
  - (xxviii) Commission decision of 12.4.2019 declaring a concentration to be compatible with the internal market and the EEA Agreement in case M.8947 - Nidec / Whirlpool (Embraco business);
  - (xxix) Commission decision of 21.06.2019 pursuant to Article 6(1)(b) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.9234 - Harris Corporation/L3 Technologies;
  - (xxx) Commission decision of 05.07.2019 pursuant to Article 6(1)(b) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.9287 - Connect Airways/Flybe;
  - (xxxi) Commission decision of 10.07.2019 pursuant to Article 6(1)(b) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area in case M.9274 - Glaxosmithkline/Pfizer/Consumer Healthcare business;
- (c) The following EU decisions made by the European Commission under Council Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty—
- (i) Commission Decision of 22.2.06 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement in case COMP/B2/38.381 – De Beers;
  - (ii) Commission Decision of 4.10.2006 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement in case COMP/C2/38.681 - The Cannes Extension Agreement;
  - (iii) Commission Decision of 14.7.2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in case COMP/39.596 – BA/AA/IB;
  - (iv) Commission Decision of 20.12.2012 addressed to Thomson Reuters Corporation and Reuters Limited relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement in case COMP/39.654 – Reuters Instrument Codes (RICs);

- (v) Commission Decision of 7.7.2016 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in case AT.39850 - Container Shipping;
  - (vi) Commission Decision of 20.7.2016 addressed to Markit Limited, Markit Group Holdings Limited, Markit Indices Limited, Markit North America, Inc, and Markit Group Limited relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in case AT.39745 - CDS Information Market;
  - (vii) Commission Decision of 20.7.2016 addressed to the International Swaps and Derivatives Association, Inc. relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement in case AT.39745 - CDS Information Market;
  - (viii) Commission Decision of 26.7.2016 addressed to Paramount Pictures International Limited and Viacom Inc. relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement in case AT.40023 – Cross-border access to pay-TV;
  - (ix) Commission Decision of 4.5.2017 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement in case AT.40153 – E-book MFNs and related matters;
  - (x) Commission Decision of 22.1.19 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement in case COMP. AT. 40049 – MasterCard II;
  - (xi) Commission Decision of 7.3.2019 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement in case AT.40023 – Cross-border access to pay-TV;
  - (xii) Commission Decision of 29.4.19 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement in case COMP. AT. 39.398 – Visa MIF;
  - (d) any EU decision made by the European Commission under Council Regulation (EC) No 139/2004<sup>(a)</sup> on the control of concentrations between undertakings on or after 15th August 2019 and before exit day which contains commitments that relate to the supply or acquisition of goods or services in the United Kingdom;
  - (e) any EU decision made by the European Commission under Council Regulation (EC) 1/2003<sup>(b)</sup> on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty on or after 15th August 2019 and before exit day which contains commitments that relate to the supply or acquisition of goods or services in the United Kingdom.”;
- (c) after sub-paragraph (1) insert—
- “(2) Sub-paragraph (1)(b), (c), (d) and (e) are subject to paragraph 2A.”.
- (3) After paragraph 2 insert—
- “**2A.**—(1) Any commitments comprised in an EU decision falling within paragraph 2(1)(b), (c), (d) or (e) that do not immediately before exit day relate to the supply or acquisition of goods or services in the United Kingdom are revoked.
- (2) Where a commitment comprised in an EU decision (the “relevant EU decision”) is revoked by sub-paragraph (1)—

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(a) O.J. L 24, 29.1.2004, p. 1.

(b) O.J. L 24 1, 4.1.2003, p.1.



- (a) any other provision contained in the relevant EU decision is revoked if, or to the extent that, it relates to the revoked commitment, and
  - (b) any decisions or approvals are revoked if, or to the extent that, they are made under, or relate to, the revoked commitment.
- (3) In this paragraph “other provision” includes—
- (a) obligations or conditions;
  - (b) procedural provision;
  - (c) enforcement provision.

**2B.**—(1) The Competition and Markets Authority must publish guidance about how it will interpret and apply the test of whether or not commitments comprised in EU decisions falling within paragraph 2(1)(b), (c), (d) or (e) relate to the supply or acquisition of goods or services in the United Kingdom.

(2) The Competition and Markets Authority may at any time publish revised guidance.”.

(4) After paragraph 10 insert—

## “PART 3

### Amendment and interpretation of retained EU commitments decisions

#### **Interpretation**

**11.** In this Part of this Schedule—

“the CMA” means the Competition and Markets Authority;

“retained EU commitment” means a commitment comprised in a retained EU commitments decision, except a commitment which is revoked by paragraph 2A and includes—

- (a) any other provision contained in the retained EU commitments decision if, or to the extent that, it relates to the commitment, and
- (b) any EU decisions or approvals if, or to the extent that, they are made under, or relate to, the commitment

and in sub-paragraph (a) “other provision” includes obligations or conditions, procedural provision, and enforcement provision;

“retained EU commitments decision” means an EU decision falling within paragraph 2(1)(b), (c), (d) or (e).

#### **Modification of retained EU commitments decisions**

**12.** On and after exit day, retained EU commitments decisions are to be read as if the following provisions were omitted—

- (a) provisions relating to powers of the European Commission to review, waive, modify or substitute retained EU commitments;
- (b) provisions relating to powers of the European Commission under EU law to take enforcement or remedial action of any kind where the retained EU commitments are not being or have not been complied with.

#### **Modification of retained EU commitments**

**13.** On and after exit day, retained EU commitments have effect subject to the following provisions of this Part.

**14.**—(1) The commitments are to be read (so far as the context permits or requires) as if—

- (a) any reference to the European Commission were a reference to the CMA;
- (b) any reference to the area of the European Union or of the European Economic Area included the United Kingdom;
- (c) any reference to the internal market included the United Kingdom;
- (d) any reference to a member State included the United Kingdom;
- (e) any reference to a party to the EEA agreement included the United Kingdom;
- (f) any reference to “general principles of law common to the legal orders of the member States without a requirement to apply a particular national system” were omitted.

(2) Sub-paragraph (1)(d) and (e) apply even in cases where the reference concerned is expressed to be a reference to the territory of such states as are from time to time member States of the European Union or parties to the EEA Agreement.

**15.** Any approval given or any other decision made under a retained EU commitments decision by the European Commission that is in force and effective immediately before exit day, is deemed to have been given or made by the CMA.

#### **Interpretation of retained EU commitments and decisions**

**16.**—(1) This paragraph applies to any provision of a retained EU commitment that requires the meaning or effect of the commitment to be interpreted or decided by reference to one or more of the following—

- (a) EU law;
- (b) EU competition law;
- (c) any notice issued by the European Commission in connection with its functions under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings or Council Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

(2) A provision to which sub-paragraph (1) applies is to be read, so far as is consistent with any modifications made on or after exit day to the retained EU commitment containing the provision, as if any reference in the provision to—

- (a) EU law or EU competition law were a reference to that law as it has effect immediately before exit day, and
- (b) any notice falling within sub-paragraph (1)(c) were a reference to that notice as it has effect immediately before exit day.

**17.** Other than in cases falling within paragraph 16, references in retained EU commitments to matters arising in connection with the commitments being subject to “the application of EU competition law” or “applicable EU competition rules” are to be read (so far as the context permits or requires) as if they were references to those matters being subject to the application of the Competition Act 1998 or the Enterprise Act 2002, as appropriate.

**18.** Any reference in a retained EU commitments decision or a retained EU commitment to—

- (a) Council Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; or
- (b) Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings,

is to be read as a reference to the EU regulation as it has effect immediately before exit day.

19. Any reference in a retained EU commitment comprised in the EU decision falling within paragraph 2(1)(c)(vi) to Article 37(1) of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012(a) is to be read as a reference to that provision as it has effect immediately before exit day.”.

## PART 7

### Amendment of Part 7 of the 2019 Regulations: saving and transitional provision

#### Amendment of Schedule 4: saving and transitional provision

35.—(1) Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraph 4—

(a) in sub-paragraph (1), after the definition of “EU element” insert—

““modified pre-exit competition law” has the meaning given in sub-paragraph (1A).”;

(b) after sub-paragraph (1), insert—

“(1A) “Modified pre-exit competition law” means—

(a) Part 1 of the 1998 Act—

(i) without the modifications made by Part 2 of these Regulations, other than the modifications made by regulations 21(3), 22 and 23 (principles to be applied in determining questions), and

(ii) with the further modifications set out in paragraph (1B);

(b) section 16 of the 2002 Act(b) without the modification made by regulation 33 of these Regulations;

(c) the enactments listed in paragraphs 2, 3 to 9, 11(2) and 12 to 15 of Schedule 1 to these Regulations and in paragraphs 11 and 13 of Part 3 of Schedule 2 to these Regulations without the modifications made by those paragraphs;

(d) subordinate legislation made under Part 1 of the 1998 Act without the modifications made by Part 1 of Schedule 2 to these Regulations, except for the modifications made by paragraph 4(4) of that Schedule;

(e) the Competition Appeal Tribunal Rules 2015 with the modifications made by paragraph 8(1) to (3) of Schedule 2 to these Regulations.

(1B) The further modifications mentioned in sub-paragraph (1A)(a)(ii) are as follows—

(a) references (however expressed) to a decision of the European Commission or a Member State competition authority that there has been an infringement of the prohibition in Article 101(1) or 102 of the Treaty on the Functioning of the European Union do not include a decision made on or after exit day;

(b) paragraph 21(3) of Schedule 8A to the 1998 Act has effect as if—

(i) in paragraph (a), after “if the competition authority makes a decision” there were inserted “before exit day”;

(ii) the “and” at the end of paragraph (a) were omitted;

(iii) in paragraph (b), for “otherwise” there were substituted “if the competition authority closes the investigation before exit day without making such a decision”; and

(iv) after paragraph (b) there were inserted—

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(a) O.J. L.173, 12.6.2014, p.84

(b) Section 16 of the Enterprise Act 2002 was amended by paragraph 81(a) of Schedule 9 to the Crime and Courts Act 2013 (c. 22), paragraph 21 of Schedule 8 to the Consumer Rights Act 2015 (c. 15) and S.I. 2012/1809.

“, and

(c) otherwise at the end of the period of one year beginning with exit day.”.

(1C) The reference in sub-paragraph (1B)(a) to a decision by a Member State competition authority is to be interpreted in accordance with paragraph 3(6) of Schedule 8A to the 1998 Act (see paragraph (c) of that provision).”.

(3) In paragraph 7—

- (a) in sub-paragraph (2), for “the enactments mentioned in sub-paragraphs (3) to (8) have effect as described there”, substitute “modified pre-exit competition law applies”;
- (b) omit sub-paragraphs (3) to (9).

(4) In paragraph 13(2), for “the enactments mentioned in paragraph 7(3) to (8) have effect as described there” substitute “modified pre-exit competition law (as defined in Part 3 of this Schedule) applies”.

(5) At the start of Part 6, after the heading insert—

**“13A.** In this Part of this Schedule—

“domestic competition infringement” means an infringement or alleged infringement of the Chapter I prohibition or the Chapter II prohibition (in each case as defined in section 59 of the 1998 Act);

“EU competition infringement” means an infringement or alleged infringement of—

- (a) the prohibition in Article 101(1) of the Treaty on the Functioning of the European Union,
- (b) the prohibition in Article 102 of that Treaty,
- (c) the prohibition in Article 53 of the European Economic Area Agreement, or
- (d) the prohibition in Article 54 of that Agreement.”.

(6) Omit paragraph 14(1) and the heading before it.

(7) Omit paragraph 15.

(8) Before paragraph 16 insert—

**“15A.** In proceedings before a court or tribunal relating to claims (and defences to claims) described in paragraph 14(2), including where the proceedings also relate to a domestic competition infringement, modified pre-exit competition law (as defined in Part 3 of this Schedule) applies.

**15B.** In proceedings before a court or tribunal relating to a domestic competition infringement which occurs before exit day, including where the infringement continues on or after exit day, modified pre-exit competition law (as defined in Part 3 of this Schedule) applies.”.

(9) Omit paragraph 17 and the heading before it.

(10) In paragraph 19, after sub-paragraph (5), insert—

“(6) If sub-paragraph (4) applies to an EU merger decision and that decision also falls within the definition of a retained EU commitments decision under Part 3 of Schedule 3 to these Regulations, the CMA may revoke the decision.

(7) If the CMA decides under sub-paragraph (6) to revoke a retained EU commitments decision, the CMA must publish its decision and the reasons for it.”.

*Kelly Tolhurst*

Parliamentary Under Secretary of State

At 11.50 a.m. on 9th September 2019

Department for Business, Energy and Industrial Strategy

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (b) and (c) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union. They amend the Competition (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/93) ('the principal Regulations') to—

- retain as a matter of domestic law decisions made by the European Commission which have the effect of making binding commitments given by parties in the context of anti-trust investigations and merger clearance functions, amend those decisions and commitments so that they operate effectively, and give powers to the Competition and Markets Authority to amend, waive, release and enforce those retained commitments in the future. This will allow the CMA to perform the functions previously undertaken by the Commission in relation to the United Kingdom; and
- make clarifications to the transitional provisions that apply in relation to claims for damages for loss arising out of competition infringements.

Part 2 amends the principal Regulations to amend the Competition Act 1998 (c.41). Part 3 amends the principal Regulations to amend the Enterprise Act 2002 (c. 40). Part 4 makes amendments to the principal Regulations to amend other primary legislation consequential to the amendments to the Enterprise Act 2002. Part 5 makes amendments to the principal Regulations to amend subordinate legislation, consequential to the amendments to the Competition Act 1998. Part 6 makes amendments to the principal Regulations to make further amendments and provisions relating to the revocation of retained EU law. Part 7 amends the transitional and savings provisions in the principal Regulations, in particular, to clarify the transitional provisions which apply in relation to claims for damages for loss arising out of competition infringements.

An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

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