

SCHEDULE 4

Saving and transitional provision

PART 3

CMA investigations under Part 1 of the 1998 Act

Interpretation

4.—(1) In this Part of this Schedule—

“investigation” means an investigation under section 25 of the 1998 Act;

“domestic element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(2), (4) or (6) of the 1998 Act;

“EU element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(3), (5) or (7) of the 1998 Act;

(2) References in this Part of this Schedule to cases in which the CMA is conducting an investigation at a particular time include cases in which the CMA would be conducting such an investigation but for section 31B(2)(1) of the 1998 Act (suspension of investigation where commitments given under section 31A(2) of that Act).

(3) References in this Part of this Schedule to the CMA are to be read as including a reference to a regulator (as defined in section 54 of the 1998 Act(3)).

Termination of EU elements of on-going investigations

5. Where the CMA is conducting an investigation immediately before exit day, it may not continue any EU elements of the investigation on and after exit day.

6.—(1) This paragraph applies where, immediately before exit day, the CMA is conducting an investigation which has both domestic elements and EU elements.

(2) Anything done before exit day for the purposes of, or in connection with, the EU elements of the investigation is to be treated, on and after exit day, as done for the purposes of, or in connection with, the domestic elements of the investigation.

(3) The reference in sub-paragraph (2) to anything done includes anything omitted to be done.

(4) On and after exit day—

(a) a notice validly issued before exit day under section 26(4), 26A(5), or 27(6) of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued for the purposes of the domestic elements of the investigation;

(1) Section 31B(2) was inserted by [S.I. 2004/1261](#) and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(2) Section 31A was inserted by [S.I. 2004/1261](#) and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(3) Section 54 was amended by paragraph 38(1) and (41) of Schedule 25 to the Enterprise Act 2002, section 371(5) of the Communications Act 2003, section 51(1) to (4) of, paragraphs 1 and 33 of Schedule 5 to, and paragraphs 8 and 11 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraph 32(1) and (2) of Schedule 7 to the Water Act 2003 (c. 37), section 74(5) of the Health and Social Care Act 2012, section 67(2) of and paragraph 9 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33), and by [S.I. 2015/1682](#) and [S.I. 2004/1261](#).

(4) Section 26 was amended by paragraphs 1 and 6 of Schedule 5 to, and paragraphs 8 and 9 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (20) of Schedule 25 to the Enterprise Act 2002, and [S.I. 2004/1261](#).

(5) Section 26A was inserted by section 39 of the Enterprise and Regulatory Reform Act 2013.

Status: This is the original version (as it was originally made).

- (b) a warrant validly issued, or an application for a warrant made, before exit day under section 28(7) or 28A(8) of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued or made in connection with the domestic elements of the investigation;
 - (c) documents and other information obtained, and representations made, before exit day for the purposes of, or in connection with, the EU elements of the investigation are to be treated as obtained or made for the purposes of, or in connection with, the domestic elements of the investigation; and
 - (d) a commitment accepted under section 31A of the 1998 Act before exit day for the purposes of addressing a competition concern identified during the course of the EU elements of the investigation, and not released before exit day, continues in force until released.
- (5) Sub-paragraph (4) is without prejudice to the generality of sub-paragraph (2).
- (6) On and after exit day a notice given before exit day under section 31(1)(9) of the 1998 Act is to be treated as if any reference to a proposed decision described in section 31(2)(c) or (d) of the 1998 Act were omitted.

Completed investigations terminated by decisions under section 31(2)(c) or (d) of the 1998 Act

7.—(1) This paragraph applies where, before exit day, the CMA has made a decision within the meaning of section 31(2)(c) or (d) of the 1998 Act.

(2) On and after exit day, in connection with the decision, the enactments mentioned in sub-paragraphs (3) to (8) have effect as described there.

(3) Part 1 of the 1998 Act has effect—

- (a) 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
- (b) with the further modifications set out in sub-paragraph (4).

(4) The further modifications mentioned in sub-paragraph (3)(b) 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 sub-paragraph (a), after “if the competition authority makes a decision” there were inserted “before exit day”;
 - (ii) the “and” at the end of sub-paragraph (a) were omitted;
 - (iii) in sub-paragraph (b), for “otherwise” there were substituted “if the competition authority closes the investigation before exit day without making such a decision”;

(6) Section 27 was amended by paragraphs 1 and 7 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (21) of Schedule 25 to the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16) and S.I. 2004/1261.

(7) Section 28 was amended by paragraphs 1 and 2 of Schedule 13 to, and paragraphs 1 and 8 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013, section 203(1) and (2) of, and paragraphs 38(1) and (22) of Schedule 25 to, the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 and S.I. 2004/1261.

(8) Section 28A was inserted by S.I. 2004/1261 and amended by paragraphs 1 and 3 of Schedule 13 to, and paragraphs 1 and 9 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

(9) Section 31(1) was amended by paragraphs 1 and 10 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

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

“; and

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

(5) Section 16 of the 2002 Act⁽¹⁰⁾ has effect without the modification made by regulation 33 of these Regulations.

(6) The enactments listed in paragraphs 2 to 9 and 11 to 15 of Schedule 1 to these Regulations and in paragraphs 11 and 13 of Part 3 of Schedule 2 to these Regulations have effect without the modifications made in those paragraphs.

(7) Subordinate legislation made under Part 1 of the 1998 Act has effect 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 (amendments to the Competition Act 1998 (Competition and Market Authority’s Rules) Order 2014).

(8) The Competition Appeal Tribunal Rules 2015 have effect without the modifications made by paragraph 8 of Schedule 2 to these Regulations, except for the modifications made by sub-paragraphs (4), (5) and (6) of that paragraph.

(9) References in sub-paragraph (4)(a) to a decision by a Member State competition authority are to be interpreted in accordance with paragraph 3(6) of Schedule 8A to the 1998 Act (see paragraph (c) of that provision).

Cases in which CMA relieved of competence by EU law

8.—(1) This paragraph applies where, immediately before exit day—

- (a) the CMA has been relieved of competence in a case under Article 11(6) of 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 in relation to a case by the European Commission initiating proceedings;
- (b) the European Commission has reached a decision in the case under Chapter III of that Regulation; and
- (c) the decision has not been annulled in full or in part by the European Court.

(2) On and after exit day the CMA may not conduct an investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the agreement, decision, concerted practice or abuse of a dominant position with which that case was concerned.

(3) Sub-paragraph (2) ceases to have effect in any case where on or after exit day the European Commission’s decision is annulled in full or in part by the European Court.

⁽¹⁰⁾ Section 16 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 and S.I. 2012/1809.