SCHEDULE 4

Saving and transitional provision

PART 7

Enterprise Act 2002

Interpretation

18.—(1) In this Part of this Schedule—

"the 2003 Order" means the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(**1**);

"EC Merger Regulation" means Council Regulation (EC) 139/2004(**2**) on the control of concentrations between undertakings as it has effect in EU law immediately before exit day;

"enterprise" has the meaning given by section 129 of the 2002 Act;

"European relevant merger situation" has the meaning given by section 68(2) of the 2002 Act.

(2) For the purposes of this Part of this Schedule the EU merger decision has been taken in relation to a concentration if—

(a) the European Commission has made a decision in relation to the concentration under Article 6(1)(b) or 8(1), (2) or (3) of the EC Merger Regulation; or

(b) the concentration is deemed to have been declared compatible with the internal market under Article 10(6) of that Regulation.

Cases decided under the EC Merger Regulation before exit day

19.—(1) This paragraph applies in a case in which immediately before exit day—

(a) a concentration has been examined by the European Commission under the EC Merger Regulation; and

(b) the EU merger decision has been taken in relation to the concentration.

(2) On or after exit day, in relation to the concentration concerned—

(a) a reference may not be made under section 22 or 33 of the 2002 Act;

(b) an intervention notice may not be given under section 42 of that Act, and

(c) a reference may not be made under section 45 of that Act(**3**).

(3) Sub-paragraph (2)(b) and (c) have effect subject to paragraph 25 of this Schedule.

(4) If, on or after exit day, the EU merger decision in relation to the concentration concerned is annulled in full or in part by the European Court following an appeal—

(a) sub-paragraph (2) ceases to have effect in relation to that concentration; and

(b) despite their repeal by these Regulations, subsections (3) to (5) of section 122 of the 2002 Act continue to have effect in relation to that concentration but with the modification set out in sub-paragraph (5).

(**1**) S.I. 2003/1592; relevant amending instruments are SI 2003/3180 and S.I .2014/891.
(**2**) O.J. L 24, 29.1.2004, p. 1.
(**3**) Section 45 was amended by paragraphs 59 and 85 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant.

(5) Section 122(4) has effect in relation to the concentration concerned as if the reference to "the EC Merger Regulation or anything done under or in accordance with them" were a reference to—

(a) Council Regulation (EC) 139/2004 on the control of concentrations between undertakings as it has effect in EU law before exit day or anything done under or in accordance with that instrument before exit day; and

(b) sub-paragraph (2) of this paragraph.

Article 22 cases referred to but not decided by the European Commission before exit day

20.—(1) This paragraph applies in a case in which immediately before exit day the CMA—

(a) has given a notice under section 25(6) of the 2002 Act to persons carrying on enterprises which have or may have ceased to be distinct extending the four month period mentioned in section 24(1)(a) or (2)(b) of that Act(**4**) following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation, but

(b) has not given a notice under section 25(8) of that Act ending that extension.

(2) Subsections (6) to (8) of section 25 of the 2002 Act continue to have effect in relation to the extension under section 25(6) of that Act, despite their repeal by regulation 35(a).

(3) Section 25(10) of that Act continues to have effect in relation to that extension without the modification made by regulation 35(b).

(4) If, immediately before exit day, the European Commission has not completed its consideration of the request of the United Kingdom, section 25(8) of that Act, as it continues to have effect by virtue of this paragraph, has effect as if for "of the completion by the European Commission of its consideration of" there were substituted "that the EC Merger Regulation has ceased to apply to".

21.—(1) This paragraph applies in a case in which immediately before exit day—

(a) the CMA has given a notice under section 25(6) of the 2002 Act to persons carrying on enterprises which have or may have ceased to be distinct extending the four month period mentioned in section 24(1)(a) or (2)(b) of that Act following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation,

(b) the CMA has also given a notice under section 25(8) of that Act ending the extension, and

(c) the European Commission is examining the concentration in accordance with the request but the EU merger decision has not been taken in relation to the concentration.

(2) The four month period mentioned in section 24(1)(a) or (2)(b) of the 2002 Act is extended for the period beginning with the receipt of the notice under section 25(8) of that Act and ending with the receipt of a notice under sub-paragraph (3).

(3) The CMA must by notice inform the persons carrying on the enterprises concerned that the EC Merger Regulation has ceased to apply to the concentration.

(4) Where the four month period mentioned in section 24(1)(a) or (2)(b) of the 2002 Act is extended by virtue of this paragraph in relation to a particular case—

(a) the reference in section 25(9) of the 2002 Act to the four month period mentioned in section 24(1)(a) or (2)(b) of that Act being extended or further extended by virtue of section 25 has effect as if it included a reference to it being further extended by virtue of this paragraph; and

(**4**) Section 24 was amended by paragraphs 59 and 69 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(b) section 25(10)(b) of the 2002 Act has effect as if it referred to the further extension or at least one previous extension of the four month period mentioned in section 24(1)(a) or (2)(b) being made under one or more of section 25(2) and (4) of that Act and this paragraph.

22.—(1) This paragraph applies in a case in which immediately before exit day the CMA—

(a) has given a notice under section 34ZB(5) of the 2002 Act, extending the initial period mentioned in section 34ZA(1) of that Act, following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation, but

(b) has not given notice as mentioned in section 34ZB(8)(b) of that Act ending that extension.

(2) Subsections (5) and (8) of section 34ZB of the 2002 Act continue to have effect in relation to the extension under section 34ZB(5) of that Act, despite their repeal by regulation 39.

(3) Section 34ZC(1), (3) and (4) of that Act continues to have effect in relation to that extension without the modifications made by regulation 40.

(4) If, immediately before exit day, the European Commission has not completed its consideration of the request of the United Kingdom, section 34ZB(8)(b) of that Act, as it continues to have effect by virtue of this paragraph, has effect as if for "of the completion by the European Commission of its consideration of" there were substituted "that the EC Merger Regulation has ceased to apply to".

23.—(1) This paragraph applies in a case in which immediately before exit day—

(a) the CMA has given a notice under section 34ZB(5) of the 2002 Act, extending the initial period mentioned in section 34ZA(1) of that Act, following a request made to the European Commission by the United Kingdom under Article 22(1) of the EC Merger Regulation,

(b) the CMA has also given notice as mentioned in section 34ZB(8)(b) of that Act ending the extension, and

(c) the European Commission is examining the concentration in accordance with the request, but the EU merger decision has not been taken in relation to the concentration.

(2) The initial period mentioned in section 34ZA(1) of the 2002 Act is extended for the period beginning with the receipt of the notice mentioned in section 34ZB(8)(b) of that Act and ending with the receipt of a notice under sub-paragraph (3).

(3) The CMA must by notice inform the persons carrying on the enterprises concerned that the EC Merger Regulation has ceased to apply to the concentration.

(4) Where the initial period mentioned in in section 34ZA(1) of the 2002 Act is extended by virtue of this paragraph in relation to a particular case—

(a) the reference in section 34ZC(3) to a period being extended or further extended under 34ZB(1) or (4) has effect as if it included a reference to it being further extended under this paragraph; and

(b) section 34ZC(4)(b) has effect as if it referred to the further extension or at least one previous extension of the period mentioned in section 34ZA(1) being made under one or more of section 34ZB(1) of the 2002 Act and this paragraph.

Cases referred by the European Commission to the CMA before exit day

24.—(1) This paragraph applies in a case in which immediately before exit day—

(a) the European Commission has by a decision referred the whole or part of a case to the CMA under Article 4(4) or 9 of the EC Merger Regulation, or is deemed to have taken such a decision; and

(b) the preliminary assessment period in relation to the case has not ended.

(2) In relation to the case—

(a) sections 34A, 46A, 46B and 122(3) to (5) of the 2002 Act continue to have effect despite their repeal by Part 3 of these Regulations, and

(b) sections 34ZA, 73A, 107 and 110B continue to have effect without the modifications made by regulations 38, 48, 50 and 51.

(3) References to the EC Merger Regulation in any provision which continues to have effect by virtue of sub-paragraph (2) have the meaning given by paragraph 18.

(4) In sub-paragraph (1), "the preliminary assessment period" has the meaning given by—

(a) section 46A(4) of the 2002 Act, in any case where an intervention notice (as defined in section 42(2) of the 2002 Act) is in force; and

(b) section 34A(4) of that Act, in any other case.

Intervention to protect legitimate interests: no European intervention notice before exit day

25.—(1) This paragraph applies in a case in which immediately before exit day—

(a) a concentration has been examined by the European Commission under the EC Merger Regulation and the EU merger decision has been taken in relation to the concentration;

(b) the conditions specified in section 67(1) of the 2002 Act are met in relation to the concentration concerned; and

(c) the Secretary of State has not made a decision to give an intervention notice under subsection (2) of that section.

(2) The old legitimate interests law continues to have effect on and after exit day in relation to the concentration concerned except that the conditions in section 67(1) are treated as being met on and after exit day.

(3) In this paragraph "the old legitimate interests law" means—

(a) sections 67 and 68 of the 2002 Act;

(b) the Enterprise Act 2002 (Anticipated Mergers) Order 2003(**5**) without the modification made by paragraph 6(2) of Schedule 2 to these Regulations; and

(c) the 2003 Order.

Intervention to protect legitimate interests: European intervention notice before exit day

26.—(1) This paragraph applies in a case in which immediately before exit day—

(a) the Secretary of State has given a notice to the CMA under section 67(2) of the 2002 Act in relation to a European relevant merger situation; and

(b) the matter to which the notice relates has been finally determined in accordance with article 3 of the 2003 Order.

(2) The old legitimate interests law continues to have effect on and after exit day in relation to undertakings accepted, and orders made, by the Secretary of State before exit day under Schedule 2 to the 2003 Order in connection with the matter.

(3) In this paragraph, "the old legitimate interests law" has the same meaning as in paragraph 25.

27.—(1) This paragraph applies in a case in which immediately before exit day—

(a) the Secretary of State has given a notice to the CMA under section 67(2) of the 2002 Act in relation to a European relevant merger situation;

(**5**) S.I. 2003/1595, to which there is an amendment not relevant to these Regulations.

(b) the matter to which the notice relates has not been finally determined in accordance with article 3 of the 2003 Order; and

(c) the EU merger decision has been taken in relation to the concentration concerned.

(2) The old legitimate interests law continues to have effect on and after exit day in connection with the matter to which the notice relates.

(3) In this paragraph, "the old legitimate interests law" has the same meaning as in paragraph 25.

28.—(1) This paragraph applies in a case in which immediately before exit day—

(a) the Secretary of State has given a notice to the CMA under section 67(2) of the 2002 Act in relation to a European relevant merger situation;

(b) the matter to which the notice relates has not been finally determined in accordance with article 3 of the 2003 Order; and

(c) the EU merger decision has not been taken in relation to the concentration concerned.

(2) On and after exit day—

(a) the notice under section 67(2) of the 2002 Act has effect as if it were a notice under section 42(2) of that Act, and

(b) Part 3 of the 2002 Act has effect in relation to the case subject to paragraphs 29 to 33.

(3) In sub-paragraph (2), the reference to Part 3 of the 2002 Act—

(a) includes provision made under that Part; and

(b) is a reference to that Part and provision made under it as modified by these Regulations.

29.—(1) This paragraph applies in a case falling within paragraph 28(1) in which before exit day the Secretary of State—

(a) has received a report of the CMA under article 4 of the 2003 Order in relation to the case; and

(b) has not decided whether to make a reference in relation to the case under article 5(2) of the 2003 Order.

(2) The report under article 4 of the 2003 Order is to be treated on and after exit day as if it were a report under section 44(2) of the 2002 Act(**6**).

(3) Section 44(2) of the 2002 Act has effect as if it required the CMA to give the Secretary of State that report and an additional report which includes the decisions mentioned in section 44(4) of that Act and, where relevant, the descriptions of undertakings mentioned in section 44(5) of that Act.

(4) In a case where the CMA is required by virtue of sub-paragraph (3) to make an additional report under section 44 of the 2002 Act—

(a) section 43 of the 2002 Act(**7**) has effect as if the reference in subsection (4)(a) of that section to the time within which the CMA is to report to the Secretary of State under section 44 of the 2002 Act were a reference to the time within which the additional report is to be made;

(b) section 45 of the 2002 Act has effect as if the reference in subsection (1) of that section to a report of the CMA under section 44 of the 2002 Act were a reference to both the report of the CMA under article 4 of the 2003 Order in relation to the case and the additional report by the CMA;

(**6**) Section 44 was amended by was amended by paragraphs 59 and 84 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013; there is another amendment to section 45 but it is not relevant.

(**7**) Section 43 was amended by paragraph 8 of Schedule 16 to the Communications Act 2003 and paragraphs 59 and 83 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(c) section 46 of the 2002 Act has effect as if the reference in subsection (2) of that section to decisions included in the CMA's report by virtue of subsection (4) of section 44 of the 2002 Act and any descriptions of undertakings as mentioned in subsection (5) of that section were a reference to the decisions and descriptions of undertakings included in the additional report by virtue of sub-paragraph (3) of this paragraph; and

(d) section 107(9)(a) of the 2002 Act(**8**) has effect as if the reference to the report of the CMA under section 44 of the 2002 Act were a reference to both the report of the CMA under article 4 of the 2003 Order in relation to the case and the additional report by the CMA.

30. In a case falling within paragraph 28(1), a report given by OFCOM to the Secretary of State before exit day under article 4A of the 2003 Order is to be treated on and after exit day as if it were a report under section 44A(2) of the 2002 Act(**9**).

31. In a case falling within paragraph 28(1), on and after exit day—

(a) undertakings accepted before exit day under paragraph 3 of Schedule 2 to the 2003 Order are to be treated as if they had been accepted under paragraph 3 of Schedule 7 to the 2002 Act(**10**); and

(b) orders made before exit day under paragraphs 2, 5 or 6 of Schedule 2 to the 2003 Order are to be treated as if made under paragraphs 2, 5 or 6 respectively of Schedule 7 to the 2002 Act.

32.—(1) This paragraph applies in a case falling within paragraph 28(1) in which immediately before exit day—

(a) the Secretary of State has made a reference under article 5(2) or (3) of the 2003 Order in relation to the case; and

(b) the CMA has not given the Secretary of State a report under article 8 of the 2003 Order in relation to the case.

(2) On and after exit day—

(a) the reference, if made under article 5(2) of the 2003 Order, is to be treated as if it had been made under section 45(2) of the 2002 Act;

(b) the reference, if made under article 5(3) of the 2003 Order, is to be treated as if it had been made under section 45(4) of the 2002 Act; and

(c) for the purposes of section 56(3) of the 2002 Act(**11**), the CMA is to be treated as having made a report under section 44 of the 2002 Act containing a decision that it is or may be the case that there is an anti-competitive outcome in relation to the relevant merger situation concerned.

(3) For the purposes of section 34C of the 2002 Act, the group constituted in consequence of the reference under article 5(2) or (3) of the 2003 Order in relation to the case is to be treated on and after exit day as if it were constituted in consequence of a reference under section 45(2) or (4) of the 2002 Act (as appropriate).

33.—(1) This paragraph applies in a case falling within paragraph 28(1) in which before exit day—

(a) the CMA has given a report to the Secretary of State under article 8 of the 2003 Order in relation to the case; and

(**8**) Section 107(9) was amended by paragraphs 18 of Schedule 16 to the Communications Act 2003.
(**9**) Section 44A was inserted by section 377 of the Communications Act 2003.
(**10**) Schedule 7 was amended by paragraphs 59 and 160 of Schedule 5, and paragraphs 1 and 4 of Schedule 7, to the Enterprise and Regulatory Reform Act 2013; there is another amendment to Schedule 7 but it is not relevant.
(**11**) Section 56 was amended by paragraphs 59 and 98 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(b) the Secretary of State has not made a decision in relation to the case under article 12(2) of the 2003 Order.

(2) The reference under article 5(2) or (3) of the 2003 Order is to be treated on and after exit day as if it were a reference under section 45(2) or (4) of the 2002 Act (as appropriate).

(3) The CMA must prepare a revised report in relation to the case and give it to the Secretary of State within the period of 12 weeks beginning with exit day.

(4) On and after exit day—

(a) if it has not already been published before exit day, the Secretary of State is not required to publish the report under article 8 of the 2003 Order; and

(b) Part 3 of the 2002 Act has effect as if the references to a report under section 50 of that Act were references to the revised report required under sub-paragraph (3) of this paragraph but this is subject to sub-paragraph (5).

(5) Where the CMA is required to prepare a revised report under sub-paragraph (3)—

(a) section 43 of the 2002 Act has effect as if the reference in subsection (4)(e) of that section to the time within which the CMA is to prepare a report under section 50 and give it to the Secretary of State were a reference to the time within which the revised report is to be prepared and given to the Secretary of State under sub-paragraph (3) of this paragraph;

(b) section 50 of the 2002 Act has effect as if subsection (1) were omitted;

(c) section 51 of the 2002 Act has effect as if subsection (1) were omitted; and

(d) section 52 has effect as if subsections (8) to (13) were omitted.

(6) For the purposes of section 34C of the 2002 Act(**12**), the group constituted in consequence of the reference under article 5(2) or (3) of the 2003 Order in relation to the case is to be treated on and after exit day as if it were constituted in consequence of a reference under section 45(2) or (4) of the 2002 Act (as appropriate).

General savings

34.—(1) On and after exit day, despite their repeal by these Regulations, subsections (3) to (5) of section 122 of the 2002 Act continue to have effect in relation to any case where enterprises ceased to be distinct before exit day, other than in a case falling within paragraph 19(1) in relation to which sub-paragraph (2) of that paragraph has effect.

(2) In its continued application by virtue of sub-paragraph (1), section 122(4) has effect as if the reference in that subsection to the "EC Merger Regulation or anything done under or in accordance with them" were a reference to Council Regulation (EC) 139/2004 on the control of concentrations between undertakings as it has effect in EU law before exit day or anything done under or in accordance with that instrument before exit day.

35. The repeal of section 209 of the 2002 Act does not affect the validity of any provision made under that section before exit day.

(**12**) Section 34C was inserted by paragraphs 59 and 74 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.