
STATUTORY INSTRUMENTS

2020 No. 1343

The Competition (Amendment etc.) (EU Exit) Regulations 2020

PART 7

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

CHAPTER 1

Competition Act 1998

Amendment of Part 3 of Schedule 4: CMA investigations under Part 1 of the 1998 Act

36.—(1) Part 3 of Schedule 4 to the 2019 Regulations is amended as follows.

(2) In paragraphs 5 and 6, for each reference to “exit day” substitute “IP completion day”.

(3) In paragraph 7—

(a) in sub-paragraphs (1) and (2), for each reference to “exit day” substitute “IP completion day”;

(b) in sub-paragraph (3)(b), before “with” insert “except in relation to cases in which the European Commission has continued competence after IP completion day in accordance with Article 92 of the EU withdrawal agreement,”;

(c) in sub-paragraph (4)(a), for “exit day” substitute “IP completion day”;

(d) in sub-paragraphs (4)(b)(i) to (iv)—

(i) for each reference to “sub-paragraph” substitute “paragraph”;

(ii) for “exit day”, substitute “IP completion day” in each place it appears;

(e) in sub-paragraph (6), for “paragraphs 2 to 9 and 11 to 15” substitute “paragraphs 2 to 9 and 12 to 15”;

(f) after sub-paragraph (6) insert—

“(6A) The Communications Act 2003 applies without the modifications made by paragraph 11 of Schedule 1 to these Regulations, except for the modifications made by sub-paragraphs (3) to (7) of that paragraph.”.

(4) After paragraph 7, insert—

“Appropriate level of a penalty

7A.—(1) This paragraph applies where—

(a) before IP completion day, a penalty or a fine has been imposed by the European Commission, or a court or other body in another Member State, in respect of an agreement or conduct; or

(b) on or after IP completion day, a penalty or fine has been imposed by the European Commission in respect of an agreement or conduct in relation to which

it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) The CMA, the Tribunal or the appropriate court must take that penalty or fine into account when setting the amount of penalty under Part 1 of the 1998 Act in relation to that agreement or conduct.

(3) In sub-paragraph (2), “the appropriate court” means—

- (a) in relation to England and Wales, the Court of Appeal;
- (b) in relation to Scotland, the Court of Session;
- (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
- (d) the Supreme Court.”.

(5) For the heading before paragraph 8, substitute “Cases subject to relevant separation agreement law”.

(6) For paragraph 8, substitute—

“8.—(1) In this paragraph and paragraphs 8A and 8B—

“Regulation 1/2003” means Council Regulation (EC) No 1/2003 of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty as it has effect from time to time for the purposes of relevant separation agreement law; and

“relevant decision” means—

a decision adopted by the European Commission pursuant to article 7(1) of Regulation 1/2003; or

a decision adopted by the European Commission pursuant to article 9(1) of Regulation 1/2003.

(2) This paragraph applies where before IP completion day—

- (a) under article 11(6) of Regulation 1/2003, the CMA was relieved of competence to apply one or both of articles 101 (in relation to an agreement) or 102 (in relation to conduct), by the European Commission initiating proceedings in relation to that agreement or conduct;
- (b) the European Commission had made a relevant decision; and
- (c) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—
 - (i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or
 - (ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.

(3) On and after IP completion day the CMA must not—

- (a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;
- (b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or
- (c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any remedial directions given or commitments made binding by the relevant decision.

8A.—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation into an agreement, decision, concerted practice or abuse of a dominant position under Regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement.

(2) While the Commission’s investigation is ongoing, the CMA must not open or re-open any investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the competition concerns with which the Commission’s investigation is concerned.

(3) Nothing in sub-paragraph (2) prevents the CMA from opening an investigation by virtue of section 25(2), (4) or (6) into competition concerns relating to an agreement, decision, concerted practice or abuse of a dominant position insofar as those concerns relate to the effects arising from the agreement, decision, concerted practice or abuse of a dominant position on and after IP completion day.

8B.—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation under regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement and—

- (a) the European Commission has made a relevant decision;
- (b) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—
 - (i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or
 - (ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.

(2) On and after IP completion day the CMA must not—

- (a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;
- (b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or
- (c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any directions given or commitments made binding by the relevant decision.”.