

2020 No. 1568

COMPETITION

The Competition Act 1998 (Groceries) (Public Policy Exclusion) Order 2020

<i>Made</i>	- - - -	<i>17th December 2020</i>
<i>Laid before Parliament</i>		<i>18th December 2020</i>
<i>Coming into force</i>	- -	<i>11th January 2021</i>

The Secretary of State, in exercise of the powers conferred by paragraph 7(1), (2) and (3) of Schedule 3 to, and section 71(3) of, the Competition Act 1998(a), makes the following Order.

The Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the prohibition contained in Chapter I of the Competition Act 1998 ought not to apply to, or ought to be deemed never to have applied in relation to, agreements of the descriptions specified in this Order.

Citation and commencement

1. This Order may be cited as the Competition Act 1998 (Groceries) (Public Policy Exclusion) Order 2020 and comes into force on 11th January 2021.

Interpretation

2. In this Order—

“consumer” means an individual who is, or seeks to be, supplied with groceries by a retailer;

“critical worker” means a worker in any part of the United Kingdom in a critical sector listed in the document titled “Critical workers and vulnerable children who can access schools or educational settings” published by the Cabinet Office and the Department for Education updated on 3rd December 2020(b);

“groceries-chain supplier” means a retailer or a supplier;

“groceries” means food (other than that sold for consumption in a store), pharmaceuticals (other than prescription-only medicines), pet food, drinks (alcoholic and non-alcoholic, other than that sold for consumption in a store), cleaning products, toiletries and household goods, but excludes petrol, clothing, DIY products, financial services, newspapers, magazines, greeting cards, CDs, DVDs, videos and audio tapes, toys, plants, flowers, perfumes, cosmetics, electrical appliances, kitchen hardware, gardening equipment, books, tobacco and tobacco products;

(a) 1998 c. 41.

(b) <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>.

“logistics service provider” means any person carrying on (or actively seeking to carry on) a business providing a service to a groceries-chain supplier in relation to delivery, storage or maintenance;

“qualifying activities” has the meaning given in article 3;

“prescription-only medicine” means any prescription only medicine within the meaning of regulation 5(3) of the Human Medicines Regulations 2012(a);

“retailer” means any person carrying on (or actively seeking to carry on) a business in any part of the United Kingdom for the supply of groceries to consumers;

“supplier” means any person carrying on (or actively seeking to carry on) a business in the supply of groceries either directly or indirectly to any retailer for resale in any part of the United Kingdom, and includes any such person established anywhere in the world;

“the groceries supply disruption period” means the period commencing on 17th December 2020 and ending on whichever is the earlier of—

- (a) the revocation of this Order; or
- (b) the expiry of this Order in accordance with article 7.

Qualifying activities

3.—(1) For the purposes of this Order a qualifying activity by a groceries-chain supplier is any activity specified in paragraph (2) insofar as it—

- (a) is for the purpose referred to in article 4(2)(a); and
- (b) does not involve the sharing between groceries-chain suppliers of any information regarding costs or pricing.

(2) The activities specified in this paragraph are—

- (a) coordination on limiting purchases by consumers of particular groceries during the groceries supply disruption period;
- (b) sharing of labour or facilities or coordination of the deployment of labour from other industries into the groceries-chain supplier workforce during the groceries supply disruption period;
- (c) coordination on the range of groceries to be or being supplied by suppliers or retailers during the groceries supply disruption period, which may include simplifying the supply chain and product specifications;
- (d) sharing information on the day to day stock position and shortages of groceries within any part of the United Kingdom during the groceries supply disruption period;
- (e) sharing information on services provided by logistics service providers during the groceries supply disruption period;
- (f) coordination on assistance for particular groups of consumers, including critical workers, the most clinically vulnerable and socially isolated groups, such as prioritising deliveries or opening stores at specific times to these groups or otherwise providing assistance to them during the groceries supply disruption period;
- (g) coordination as regards the temporary closure of stores or opening hours of stores during the groceries supply disruption period;
- (h) coordination on supplying groceries to consumers in areas of the United Kingdom that are particularly vulnerable to shortages of groceries during the groceries supply disruption period; and
- (i) sharing information on the day to day passage of groceries to, from or through any port within any part of the United Kingdom during the groceries supply disruption period.

(a) S.I. 2012/1916.

Exclusion from the Chapter I prohibition

4.—(1) The prohibition contained in Chapter I of the Competition Act 1998 does not apply to an agreement^(a) which—

- (a) is between two or more groceries-chain suppliers;
- (b) relates to a qualifying activity listed in article 3;
- (c) is notified to the Secretary of State in accordance with article 5(1); and
- (d) meets the conditions set out in paragraph (2).

(2) The conditions referred to in paragraph (1)(d) are that—

- (a) the purpose of the agreement is to prevent or mitigate disruption to the supply of groceries to consumers in any part of the United Kingdom during the groceries supply disruption period; and
- (b) the agreement does not have as its object or effect the prevention, restriction or distortion of competition within the United Kingdom, except in relation to qualifying activities set out in article 3 in a market for the provision of groceries to consumers in any part of the United Kingdom.

(3) The prohibition contained in Chapter I of the Competition Act 1998 is to be deemed never to have applied in relation to an agreement of the kind referred to in paragraph (1) which was made in the period beginning on 17th December 2020 and ending the day before the day on which this Order comes into force.

Notification to the Secretary of State

5.—(1) An agreement is notified to the Secretary of State in accordance with this paragraph if the following details of the agreement are given to the Secretary of State in writing within 14 days of the relevant date—

- (a) the names of the undertakings which are parties to the agreement;
- (b) a description of the nature of the agreement;
- (c) the date the agreement was made;
- (d) a description of the nature of the disruption that the agreement seeks to prevent or mitigate; and
- (e) the groceries to which it relates.

(2) In this article the “relevant date”, in relation to an agreement, means—

- (a) in case of an agreement implemented before the coming into force of this Order, the date this Order comes into force;
- (b) in any other case, the date on which the agreement is made.

Register of agreements

6.—(1) The Secretary of State must compile and maintain a register of agreements notified under this Order.

(2) The register must be kept in such form as the Secretary of State considers appropriate.

(3) The Secretary of State must publish the register when it is first compiled and each time it is revised.

(a) Under section 59 of the Competition Act 1998 (interpretation) references in Part 1 of that Act to “agreement” are to be read with section 2(5) and (6) of the Act which provide that, unless the context otherwise requires, a provision of Part 1 of the Act which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).

Expiry

7. This Order expires at the end of 31st March 2021.

17th December 2020

Paul Scully
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Order)

This Order excludes from the Chapter I prohibition in the Competition Act 1998 agreements between groceries chain suppliers which prevent or mitigate disruption to the supply of groceries to consumers in the United Kingdom during the groceries supply disruption period. The Chapter I prohibition precludes agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. Where there are exceptional and compelling reasons of public policy for doing so, the Secretary of State may exclude an agreement or an agreement of a particular description from the Chapter I prohibition.

Article 3 of the Order specifies the activities to which an agreement between groceries-chain suppliers must relate in order to qualify for an exclusion, and article 4 sets out other requirements which such an agreement must meet in order to qualify for exclusion.

Articles 5 and 6 provide for agreements to be notified to the Secretary of State and for a register of the agreements to be compiled and published by the Secretary of State.

Article 7 provides that the Order expires at the end of 31st March 2021.

No impact assessment has been prepared for this Order.

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