

2020 No. 481

COMPETITION

**The Competition Act 1998 (Dairy Produce) (Coronavirus)
(Public Policy Exclusion) Order 2020**

Made - - - - - *30th April 2020*

Laid before Parliament *1st May 2020*

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by section 71(3) of, and paragraph 7(1), (2) and (3) of Schedule 3 to, 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 Chapter I prohibition (as defined in section 2(8) of that Act) 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 (Dairy Produce) (Coronavirus) (Public Policy Exclusion) Order 2020 and comes into force on the day after the day on which it is laid before Parliament.

Interpretation

2. In this Order—

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

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“customer” means a person to whom a dairy produce supplier sells milk or other milk products;

“dairy produce” means milk and other milk products;

“the dairy produce demand disruption period” means the period commencing on 1st April 2020 and ending on whichever is the earlier of—

- (a) the date specified in a notice published by the Secretary of State in accordance with article 7(2) as the date on which the dairy produce demand disruption period is to end; or
- (b) the expiry of this Order in accordance with article 10;

“dairy produce supplier” means—

- (a) a farmer who produces and sells milk;
- (b) a person operating an establishment which either processes milk or manufactures other milk products or both; and
- (c) any other person or group of persons who buy and sell milk or other milk products at any point in the chain of supply for dairy produce between a farmer and consumer;

“farmer” means a person who (alone or in partnership) carries on the trade of farming;

“logistics service provider” means any person carrying on (or actively seeking to carry on) a business providing a service to a dairy produce supplier in relation to delivery or storage of dairy produce or the maintenance of equipment used to process milk or manufacture other milk products;

“milk” means the product of milking one or more cows;

“other milk products” means any milk products other than milk, and includes skimmed and semi-skimmed milk, cream, butter, yoghurt and cheese;

“qualifying activities” has the meaning given in article 3 for dairy produce suppliers and has the meaning given in article 4 for logistics service providers;

“retailer” means any person carrying on (or actively seeking to carry on) a business in the supply of dairy produce to consumers;

“surplus milk” means milk produced which is excess to customer demand.

Qualifying activities by dairy produce suppliers

3.—(1) For the purposes of this Order a qualifying activity by a dairy produce supplier is—

- (a) any activity specified in paragraph (2) insofar as it—
 - (i) is for the purpose referred to in article 5(2)(a); and
 - (ii) does not involve the sharing between dairy produce suppliers of any information regarding costs or pricing; or
- (b) any activity specified in paragraph (3) insofar as it—
 - (i) is for the purpose referred to in article 5(4)(a); and
 - (ii) does not involve the sharing between dairy produce suppliers of any information regarding costs or pricing.

(2) The activities specified in this paragraph are—

- (a) collecting and sharing information on surplus milk quantities, stock levels, and aggregate customer demand for milk during the dairy produce demand disruption period;
- (b) collecting and sharing information on the availability of milk processing, storage and drying capacity during the dairy produce demand disruption period;
- (c) sharing of labour or coordination of the deployment of labour from other industries into the dairy produce supplier workforce during the dairy produce demand disruption period;
- (d) coordination and sharing of facilities or coordination of the deployment of new facilities in the dairy produce supply chain during the dairy produce demand disruption period;
- (e) coordination on the processing and storage of surplus milk during the dairy produce demand disruption period; and
- (f) sharing information on services provided by logistics service providers during the dairy produce demand disruption period.

(3) The activities specified in this paragraph are—

- (a) coordination as regards the temporary reduction of milk production during the dairy produce demand disruption period insofar as it does not involve coordination with the object of excluding one or more dairy produce suppliers from the market; and

- (b) sharing information on best practices in relation to surplus milk disposal and the environmental impact of surplus milk disposal during the dairy produce demand disruption period.

Qualifying activities by logistics service providers

4.—(1) For the purposes of this Order a qualifying activity by a logistics service provider is any activity specified in paragraph (2) insofar as it—

- (a) is for the purpose referred to in article 6(2)(a); and
 - (b) does not involve the sharing between logistics service providers of any information regarding costs or pricing.
- (2) The activities specified in this paragraph are—
- (a) sharing information on labour availability during the dairy produce demand disruption period;
 - (b) sharing of labour or facilities or coordination of the deployment of labour during the dairy produce demand disruption period; and
 - (c) sharing information on delivery vehicle capacity and the size, type or destination of delivery vehicles during the dairy produce demand disruption period.

Exclusion from the Chapter I prohibition in relation to dairy produce suppliers

5.—(1) The Chapter I prohibition does not apply to an agreement(a) which—

- (a) is between two or more dairy produce suppliers;
 - (b) relates to a qualifying activity listed in article 3(2);
 - (c) is notified to the Secretary of State in accordance with article 8(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 maximise the processing, transport and storage efficiency and the storage capacity of dairy produce and to prevent or mitigate the need for the disposal of milk resulting from a disruption in demand caused by a reason relating to coronavirus; 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(2) in a market for the provision of dairy produce in any part of the United Kingdom affected by a disruption in demand caused by a reason relating to coronavirus.
- (3) The Chapter I prohibition does not apply to an agreement which—
- (a) is between two or more dairy produce suppliers;
 - (b) relates to a qualifying activity listed in article 3(3);
 - (c) is notified to the Secretary of State in accordance with article 8(1); and
 - (d) meets the conditions set out in paragraph (4).
- (4) The conditions referred to in paragraph (3)(d) are that—
- (a) the purpose of the agreement is to prevent or mitigate the need for the disposal of surplus milk or to limit the environmental impact of any disposal of surplus milk resulting from a disruption in demand caused by a reason relating to coronavirus; and

(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).

- (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(3) in a market for the provision of dairy produce in any part of the United Kingdom affected by a disruption in demand caused by a reason relating to coronavirus.

(5) The Chapter I prohibition is to be deemed never to have applied in relation to an agreement of the kind referred to in paragraph (1) or (3) which was made in the period beginning on 1st April 2020 and ending on the day before the day on which this Order comes into force.

Exclusion from the Chapter I prohibition in relation to logistics service providers

6.—(1) The Chapter I prohibition does not apply to an agreement which—

- (a) is between two or more logistics service providers.
- (b) relates to a qualifying activity listed in article 4;
- (c) is notified to the Secretary of State in accordance with article 8(1); and
- (d) meets the conditions set out in paragraph (2).

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

- (a) the purpose of the agreement is to maximise the processing, transport and storage efficiency and the storage capacity of dairy produce and to prevent or mitigate the need for the disposal of milk resulting from a disruption in demand caused by a reason relating to coronavirus; 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 4 in a market for the provision of dairy produce in any part of the United Kingdom affected by a disruption in demand caused by a reason relating to coronavirus.

(3) The Chapter I prohibition 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 1st April 2020 and ending on the day before the day on which this Order comes into force.

End of dairy produce demand disruption period

7.—(1) This article applies if, at any time more than 28 days before this Order expires, the Secretary of State considers that—

- (a) there is no longer a significant disruption or threat of significant disruption to the demand for dairy produce in the United Kingdom caused by a reason relating to coronavirus; and
- (b) the dairy produce demand disruption period should end before the date on which this Order expires.

(2) The Secretary of State must publish a notice to that effect specifying the date on which the dairy produce demand disruption period is to end.

(3) The date specified in the notice given under paragraph (2) must not be less than 28 days after the date on which the notice is published.

(4) A notice under paragraph (2) is to be published in such a manner as the Secretary of State considers appropriate.

Notification to the Secretary of State

8.—(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 on which the agreement was made; and

- (d) the dairy produce to which it relates.
- (2) In paragraph (1), the “relevant date” means—
 - (a) in case of an agreement made 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

9.—(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.

Expiry

10. This Order expires at the end of the period of three months beginning with the day on which it comes into force.

30th April 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 dairy produce suppliers and agreements between logistics service providers, intended to address the effects or likely effects of coronavirus on the demand for dairy produce in the United Kingdom. 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 dairy produce suppliers must relate in order to qualify for an exclusion, and article 5 sets out other requirements which such an agreement must meet in order to qualify for exclusion.

Article 4 of the Order specifies the activities to which an agreement between logistics service providers must relate in order to qualify for an exclusion, and article 6 sets out other requirements which such an agreement must meet in order to qualify for exclusion.

Article 7 requires the Secretary of State to publish a notice if, at any time more than 28 days before the Order is due to expire, the Secretary of State considers that there is no longer a significant disruption or a threat of significant disruption to the demand for dairy produce in the United Kingdom as a result of coronavirus. The notice must specify the date on which the period during which the exclusions under this Order apply, is to end.

Articles 8 and 9 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 10 provides that the Order expires at the end of the period of three months beginning on the day on which it comes into force.

No impact assessment has been prepared for this Order.

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