
STATUTORY INSTRUMENTS

2021 No. 1169

**The Competition Act 1998 (Carbon Dioxide)
(Public Policy Exclusion) Order 2021**

Exclusion from the Chapter I prohibition

4.—(1) The Chapter I prohibition does not apply to agreements⁽¹⁾ between two or more distributors which—

- (a) relate to a qualifying activity specified in article 3(2)(b) or (c);
- (b) are notified to the Secretary of State in accordance with article 5(1); and
- (c) meet the conditions set out in paragraph (4).

(2) The Chapter I prohibition is to be deemed never to have applied in relation to an agreement referred to in paragraph (1) which was entered into in the period beginning with 30th September 2021 and ending with the day before the day on which this Order comes into force.

(3) The Chapter I prohibition is to be deemed never to have applied in relation to agreements entered into during the CO₂ negotiation period which—

- (a) are between CF and any distributor or between two or more distributors;
- (b) relate to a qualifying activity specified in article 3(2)(a);
- (c) are notified to the Secretary of State in accordance with article 5(1); and
- (d) meet the conditions set out in paragraph (4).

(4) The conditions referred to in paragraphs (1)(c) and (3)(d) are that—

- (a) the purpose of the agreement is to prevent or mitigate disruption to the supply of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom during the Chapter I exclusion period;
- (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 specified in article 3 in a market for the provision of CO₂ to distributors, consumers and, in particular, essential users in any part of the United Kingdom; and
- (c) in the case of an agreement relating to a qualifying activity referred to in article 3(2)(a), the term of any contract for the purchase by a distributor of CO₂ that arises out of or in connection with the qualifying activity expires no later than the end of 31st January 2022.

(1) Under section 59 of the Competition Act 1998 (interpretation) references in Part I 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 I 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).