

## SCHEDULE 4

Regulation 64

### Saving and transitional provision

## PART 1

### Interpretation

#### Interpretation

**1.** In this Schedule—

“the 1998 Act” means the Competition Act 1998;

“the 2002 Act” means the Enterprise Act 2002(1);

“the CMA” means the Competition and Markets Authority.

## PART 2

### Exemptions from the Chapter 1 prohibition

#### Pre-existing agreements exempt by virtue of an EU decision

**2.—**(1) This paragraph applies if—

(a) immediately before exit day, an agreement is exempt from the Chapter 1 prohibition under section 10 of the 1998 Act by virtue of an EU decision(2); and

(b) the decision (as it has effect in EU law) has not expired or been revoked under EU law.

(2) On and after exit day, section 10 of the 1998 Act has effect in relation to the agreement without the modifications made by regulation 3(3), (4), (6)(c) and (8) of these Regulations.

(3) In this paragraph—

(a) “the Chapter 1 prohibition” means the prohibition imposed by section 2(1) of the 1998 Act;

(b) references to an agreement include a reference to a decision by an association of undertakings and a concerted practice.

(4) For the purposes of section 10 of the 1998 Act as it has effect by virtue of this paragraph, section 59 of that Act (interpretation) has effect without the modifications made by regulation 21(2).

#### Pre-existing research and development agreements

**3.—**(1) Sub-paragraph (2) applies if—

(a) a research and development agreement is entered into before exit day, and

(b) in relation to the agreement, the 7 year period specified in Article 4(1) of the EU R&D block exemption regulation begins before exit day.

(2) On and after exit day, Article 4(1) of the retained R&D block exemption regulation has effect in relation to the agreement without the modification made by paragraph 7(4) of Schedule 3 to these Regulations.

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(1) 2002 c. 40.

(2) Agreements exempt by virtue of an EU decision are subject to an existing saving provision under regulation 7 of S.I. 2004/1261.

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- (3) Sub-paragraph (4) applies if—
- (a) a research and development agreement is entered into before exit day, and
  - (b) immediately before exit day, the agreement contains an obligation described in Article 6(b) of the EU R&D block exemption regulation.
- (4) On and after exit day, Article 6(b) of the retained R&D block exemption regulation has effect in relation to the agreement without the modification made by paragraph 7(6)(b) of Schedule 3 to these Regulations.
- (5) In this paragraph—
- “research and development agreement” has the same meaning as in the EU R&D block exemption regulation;
  - “the R&D block exemption regulation” means Commission Regulation (EU) 1217/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements;
  - “the EU R&D block exemption regulation” means the R&D block exemption regulation as it has effect as part of EU law immediately before exit day;
  - “the retained R&D block exemption regulation” means the R&D block exemption regulation as it has effect as part of domestic law on and after exit day.

## PART 3

### CMA investigations under Part 1 of the 1998 Act

#### Interpretation

- 4.—(1) In this Part of this Schedule—
- “investigation” means an investigation under section 25 of the 1998 Act;
  - “domestic element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(2), (4) or (6) of the 1998 Act;
  - “EU element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(3), (5) or (7) of the 1998 Act;
- (2) References in this Part of this Schedule to cases in which the CMA is conducting an investigation at a particular time include cases in which the CMA would be conducting such an investigation but for section 31B(2)(3) of the 1998 Act (suspension of investigation where commitments given under section 31A(4) of that Act).
- (3) References in this Part of this Schedule to the CMA are to be read as including a reference to a regulator (as defined in section 54 of the 1998 Act(5)).

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(3) Section 31B(2) was inserted by [S.I. 2004/1261](#) and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(4) Section 31A was inserted by [S.I. 2004/1261](#) and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(5) Section 54 was amended by paragraph 38(1) and (41) of Schedule 25 to the Enterprise Act 2002, section 371(5) of the Communications Act 2003, section 51(1) to (4) of, paragraphs 1 and 33 of Schedule 5 to, and paragraphs 8 and 11 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraph 32(1) and (2) of Schedule 7 to the Water Act 2003 (c. 37), section 74(5) of the Health and Social Care Act 2012, section 67(2) of and paragraph 9 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33), and by [S.I. 2015/1682](#) and [S.I. 2004/1261](#).

### **Termination of EU elements of on-going investigations**

5. Where the CMA is conducting an investigation immediately before exit day, it may not continue any EU elements of the investigation on and after exit day.

6.—(1) This paragraph applies where, immediately before exit day, the CMA is conducting an investigation which has both domestic elements and EU elements.

(2) Anything done before exit day for the purposes of, or in connection with, the EU elements of the investigation is to be treated, on and after exit day, as done for the purposes of, or in connection with, the domestic elements of the investigation.

(3) The reference in sub-paragraph (2) to anything done includes anything omitted to be done.

(4) On and after exit day—

(a) a notice validly issued before exit day under section 26(6), 26A(7), or 27(8) of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued for the purposes of the domestic elements of the investigation;

(b) a warrant validly issued, or an application for a warrant made, before exit day under section 28(9) or 28A(10) of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued or made in connection with the domestic elements of the investigation;

(c) documents and other information obtained, and representations made, before exit day for the purposes of, or in connection with, the EU elements of the investigation are to be treated as obtained or made for the purposes of, or in connection with, the domestic elements of the investigation; and

(d) a commitment accepted under section 31A of the 1998 Act before exit day for the purposes of addressing a competition concern identified during the course of the EU elements of the investigation, and not released before exit day, continues in force until released.

(5) Sub-paragraph (4) is without prejudice to the generality of sub-paragraph (2).

(6) On and after exit day a notice given before exit day under section 31(1)(11) of the 1998 Act is to be treated as if any reference to a proposed decision described in section 31(2)(c) or (d) of the 1998 Act were omitted.

### **Completed investigations terminated by decisions under section 31(2)(c) or (d) of the 1998 Act**

7.—(1) This paragraph applies where, before exit day, the CMA has made a decision within the meaning of section 31(2)(c) or (d) of the 1998 Act.

(2) On and after exit day, in connection with the decision, the enactments mentioned in sub-paragraphs (3) to (8) have effect as described there.

(3) Part 1 of the 1998 Act has effect—

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(6) Section 26 was amended by paragraphs 1 and 6 of Schedule 5 to, and paragraphs 8 and 9 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (20) of Schedule 25 to the Enterprise Act 2002, and [S.I. 2004/1261](#).

(7) Section 26A was inserted by section 39 of the Enterprise and Regulatory Reform Act 2013.

(8) Section 27 was amended by paragraphs 1 and 7 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (21) of Schedule 25 to the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16) and [S.I. 2004/1261](#).

(9) Section 28 was amended by paragraphs 1 and 2 of Schedule 13 to, and paragraphs 1 and 8 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013, section 203(1) and (2) of, and paragraphs 38(1) and (22) of Schedule 25 to, the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 and [S.I. 2004/1261](#).

(10) Section 28A was inserted by [S.I. 2004/1261](#) and amended by paragraphs 1 and 3 of Schedule 13 to, and paragraphs 1 and 9 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

(11) Section 31(1) was amended by paragraphs 1 and 10 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

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- (a) without the modifications made by Part 2 of these Regulations, other than the modifications made by regulations 21(3), 22 and 23 (principles to be applied in determining questions), and
  - (b) with the further modifications set out in sub-paragraph (4).
- (4) The further modifications mentioned in sub-paragraph (3)(b) are as follows—
- (a) references (however expressed) to a decision of the European Commission or a Member State competition authority that there has been an infringement of the prohibition in Article 101(1) or 102 of the Treaty on the Functioning of the European Union do not include a decision made on or after exit day;
  - (b) paragraph 21(3) of Schedule 8A to the 1998 Act has effect as if—
    - (i) in sub-paragraph (a), after “if the competition authority makes a decision” there were inserted “before exit day”;
    - (ii) the “and” at the end of sub-paragraph (a) were omitted;
    - (iii) in sub-paragraph (b), for “otherwise” there were substituted “if the competition authority closes the investigation before exit day without making such a decision”;
    - and
    - (iv) after sub-paragraph (b) there were inserted—
      - “; and
      - (c) otherwise, at the end of the period of one year beginning with exit day.”.
- (5) Section 16 of the 2002 Act<sup>(12)</sup> has effect without the modification made by regulation 33 of these Regulations.
- (6) The enactments listed in paragraphs 2 to 9 and 11 to 15 of Schedule 1 to these Regulations and in paragraphs 11 and 13 of Part 3 of Schedule 2 to these Regulations have effect without the modifications made in those paragraphs.
- (7) Subordinate legislation made under Part 1 of the 1998 Act has effect without the modifications made by Part 1 of Schedule 2 to these Regulations, except for the modifications made by paragraph 4(4) of that Schedule (amendments to the Competition Act 1998 (Competition and Market Authority’s Rules) Order 2014).
- (8) The Competition Appeal Tribunal Rules 2015 have effect without the modifications made by paragraph 8 of Schedule 2 to these Regulations, except for the modifications made by sub-paragraphs (4), (5) and (6) of that paragraph.
- (9) References in sub-paragraph (4)(a) to a decision by a Member State competition authority are to be interpreted in accordance with paragraph 3(6) of Schedule 8A to the 1998 Act (see paragraph (c) of that provision).

### **Cases in which CMA relieved of competence by EU law**

- 8.—(1) This paragraph applies where, immediately before exit day—
- (a) the CMA has been relieved of competence in a case under Article 11(6) of 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 in relation to a case by the European Commission initiating proceedings;
  - (b) the European Commission has reached a decision in the case under Chapter III of that Regulation; and

<sup>(12)</sup> Section 16 was amended by paragraph 81(a) of Schedule 9 to the Crime and Courts Act 2013 (c. 22), paragraph 21 of Schedule 8 to the Consumer Rights Act 2015 and S.I. 2012/1809.

(c) the decision has not been annulled in full or in part by the European Court.

(2) On and after exit day the CMA may not conduct an investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the agreement, decision, concerted practice or abuse of a dominant position with which that case was concerned.

(3) Sub-paragraph (2) ceases to have effect in any case where on or after exit day the European Commission's decision is annulled in full or in part by the European Court.

## PART 4

### Inspections and investigations under Parts 2 and 2A of the 1998 Act

9. On and after exit day—

(a) the CMA and other persons may not take or continue any action for the purposes of, or in connection with, an Article 20 inspection, an Article 21 inspection or an Article 22(2) inspection (as defined in section 61 of the 1998 Act<sup>(13)</sup>) in reliance on Part 2 of the 1998 Act; and

(b) the CMA may not continue an Article 22(1) investigation (as defined in section 65C(1) of the 1998 Act<sup>(14)</sup>).

10. A warrant issued and in force under section 62(1)<sup>(15)</sup>, 62A(1)<sup>(16)</sup>, 63(1)<sup>(17)</sup>, 65G(1)<sup>(18)</sup> or 65H(1)<sup>(19)</sup> of the 1998 Act ceases to have effect on exit day.

11. A notice given under section 65E(2)<sup>(20)</sup> or 65F(2)<sup>(21)</sup> of the 1998 Act ceases to have effect on exit day.

12. Despite their repeal by these Regulations, sections 65B<sup>(22)</sup> and 65K<sup>(23)</sup> of the 1998 Act (use of statements in prosecution) continue to have effect on and after exit day in relation to statements made before exit day.

## PART 5

### Redress schemes further to European Commission decisions

13.—(1) This paragraph applies where before exit day the European Commission has made a decision that the prohibition in Article 101(1) or Article 102 has been infringed.

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(13) Section 61 was amended by paragraphs 1 and 4 of Schedule 13 to, and paragraphs 1 and 40 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013 and [S.I. 2012/1809](#).

(14) Section 65C(1) was inserted by [S.I. 2004/1261](#) and amended by paragraphs 1 and 45 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(15) Section 62(1) was amended by paragraphs 1 and 5 of Schedule 13 to the Enterprise and Regulatory Reform Act 2013 and by [S.I. 2004/1261](#).

(16) Section 62A(1) was inserted by [S.I. 2004/1261](#) and amended by paragraphs 1 and 6 of Schedule 13 to the Enterprise and Regulatory Reform Act 2013.

(17) Section 63(1) was amended by paragraphs 1 and 44 of Schedule 5 to, and paragraphs 1 and 7 of Schedule 13 to the Enterprise and Regulatory Reform Act 2013, and by [S.I. 2004/1261](#).

(18) Section 65G(1) was inserted by [S.I. 2004/1261](#) and amended by paragraphs 1 and 9 of Schedule 13 to, and paragraphs 1 and 49 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.

(19) Section 65H(1) was inserted by [S.I. 2004/1261](#) and amended by paragraphs 1 and 10 of Schedule 13 to, and paragraphs 1 and 50 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(20) Section 65E(2) was inserted by [S.I. 2004/1261](#).

(21) Section 65F(2) was inserted by [S.I. 2004/1261](#).

(22) Section 65B was inserted by [S.I. 2004/1261](#).

(23) Section 65K was inserted by [S.I. 2004/1261](#).

(2) In relation to schemes offering compensation in consequence of the decision, and applications for the approval of such schemes, on and after exit day, in connection with the decision, the enactments mentioned in paragraph 7(3) to (8) have effect as described there.

## PART 6

### Court and tribunal proceedings relating to competition

#### **Claims before a court or tribunal relating to pre-exit day EU competition infringements**

14.—(1) In this paragraph, “EU competition infringement” means an infringement or alleged infringement of—

- (a) the prohibition in Article 101(1) of the Treaty on the Functioning of European Union,
- (b) the prohibition in Article 102 of that Treaty,
- (c) the prohibition in Article 53 of the European Economic Area Agreement, or
- (d) the prohibition in Article 54 of that Agreement.

(2) Where an EU competition infringement occurs before exit day, on and after exit day a person may—

- (a) continue any claim (or defence to a claim) in relation to that infringement in proceedings before a court or tribunal in the United Kingdom, and
- (b) make any claim (or defence to a claim) in relation to that infringement in proceedings before a court or tribunal in the United Kingdom which the person could have made before exit day.

(3) The reference in sub-paragraph (2)(b) to a claim which a person could have made before exit day includes a claim which the person could have made if any loss or damage to which the claim relates had arisen before exit day (whether or not it did so).

(4) Where a person has acquired the right to make a claim from another person (whether by operation of law or otherwise), the reference in sub-paragraph (2)(b) to a claim which a person could have made before exit day includes a claim which that other person could have made before exit day.

15. In relation to claims (and defences to claims) described in paragraph 14(2) the enactments mentioned in paragraph 7(3) to (8) have effect as described there.

16. Where, before exit day, a reference has been made in proceedings by the Competition Appeal Tribunal to the European Court under rule 109 of the Competition Appeal Tribunal Rules 2015 and no preliminary ruling has been made, any stay (or in Scotland, sist) under rule 109(3) is to continue on and after exit day unless or until the Tribunal otherwise directs.

#### **Claims before a court or tribunal relating to pre-exit day domestic competition infringements**

17.—(1) In this paragraph “domestic competition infringement” means an infringement or alleged infringement of the Chapter I prohibition or the Chapter II prohibition (in each case as defined in section 59 of the 1998 Act).

(2) On and after exit day, in relation to proceedings before a court or tribunal relating to a claim in respect of loss or damage arising from a domestic competition infringement that occurred before exit day, for the purposes of paragraphs 29, 30, 33 and 34 of Schedule 8A to the 1998 Act, paragraph 3 of that Schedule (definition of “competition authority”, “investigation materials” etc.) has effect without the modifications made by regulation 30(3) of these Regulations.

## 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<sup>(24)</sup>;

“EC Merger Regulation” means Council Regulation (EC) 139/2004<sup>(25)</sup> 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<sup>(26)</sup>.

(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).

(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

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<sup>(24)</sup> S.I. 2003/1592; relevant amending instruments are SI 2003/3180 and S.I. 2014/891.

<sup>(25)</sup> O.J. L 24, 29.1.2004, p. 1.

<sup>(26)</sup> 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.

- (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<sup>(27)</sup> 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
- (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—

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



- (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 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.

*Status: This is the original version (as it was originally made).*

(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(28) 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;
- (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.

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(28) [S.I. 2003/1595](#), to which there is an amendment not relevant to these Regulations.

(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(**29**).

(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(**30**) 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;
- (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

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(29) 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.

(30) 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.

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- (d) section 107(9)(a) of the 2002 Act(31) 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(32).

**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(33); 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(34), 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
- (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).

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(31) Section 107(9) was amended by paragraphs 18 of Schedule 16 to the Communications Act 2003.

(32) Section 44A was inserted by section 377 of the Communications Act 2003.

(33) 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.

(34) Section 56 was amended by paragraphs 59 and 98 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(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<sup>(35)</sup>, 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.

## PART 8

### Company Directors Disqualification Legislation

**36.**—(1) This paragraph applies where an undertaking engages in conduct which infringes Article 101 or 102 of the Treaty of the Functioning of the European Union before exit day.

(2) On and after exit day—

(a) section 9A of the Company Directors Disqualification Act 1986 has effect without the modifications made by paragraph 1(1) to (3) of Schedule 1 to these Regulations; and

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<sup>(35)</sup> Section 34C was inserted by paragraphs 59 and 74 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

**Status:** This is the original version (as it was originally made).

- (b) Article 13A of the Company Directors Disqualification (Northern Ireland) Order 2002 has effect without the modifications made by paragraph 10(1) to (3) of Schedule 1 to these Regulations.