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STATUTORY INSTRUMENTS

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**2006 No. 3336**

**The Water and Sewerage Services  
(Northern Ireland) Order 2006**

**PART III**

**APPOINTMENT AND REGULATION OF UNDERTAKERS**

**CHAPTER I**

**APPOINTMENTS**

*Competition*

**Functions of the Authority with respect to competition**

**29.**—(1) The functions to which paragraph (2) apply shall be concurrent functions of the Authority and the [F1CMA].

(2) This paragraph applies to the functions of the [F2CMA] under Part 4 of the Enterprise Act (other than sections 166 [F3, 171 and 174E]) so far as [F4those functions—

- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- (b) relate to] commercial activities connected with the supply of water or the provision of sewerage services.

(3) The Authority shall be entitled to exercise, concurrently with the [F5CMA], the functions of the [F5CMA] under the provisions of Part 1 of the Competition Act 1998 (c. 41) (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act, [F6or]

[F7(c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),]

in relation to commercial activities connected with the supply of water or securing the supply of water or the provision or securing the provision of sewerage services.

(4) So far as necessary for the purposes of, or in connection with, the provisions of paragraph [F8(1) and (2)—

- (a) references] in Part 4 of the Enterprise Act to the [F9CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 [F10, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise [F11requires);

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- (b) references in that Part to section 5 of the Act of 2002 are to be construed as including references to Article 60(1) and (2) of this Order. ]

[<sup>F12</sup>(4A) Section 130A of the Enterprise Act 2002 is to have effect in its application to the Authority by virtue of paragraphs (1) and (2)—

- (a) as if for subsection (1) of that section there were substituted—

“(1) Where the Northern Ireland Authority for Utility Regulation—

(a) is proposing to carry out its functions under Article 60(1) and (2) of the Water and Sewerage Services (Northern Ireland) Order 2006 in relation to a matter for the purposes mentioned in subsection (2), and

(b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the supply of water or the provision of sewerage services (within the meaning given by Article 2 of the Water and Sewerage Services (Northern Ireland) Order 2006)”.]

(5) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to the [<sup>F13</sup>CMA] are to be read as including a reference to the Authority (except in sections 31D(1) to (6), 38(1) to (6), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).

(6) Before the [<sup>F13</sup>CMA] or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (1), it shall consult the other.

(7) Neither the [<sup>F13</sup>CMA] nor the Authority shall exercise in relation to any matter any functions which are exercisable concurrently by virtue of paragraph (1) if functions which are so exercisable have been exercised in relation to that matter by the other.

(8) It shall be the duty of the Authority, for the purpose of assisting [<sup>F14</sup>a CMA group] in carrying out an investigation on a [<sup>F15</sup>market investigation reference made by the Authority (under section 131 of the Act of 2002), and] by virtue of paragraph (2), to give to the [<sup>F16</sup>group]—

- (a) any information which is in the Authority's possession and which relates to matters falling within the scope of the investigation, and which is either requested by the [<sup>F16</sup>group] for that purpose or is information which in the Authority's opinion it would be appropriate for that purpose to give to the [<sup>F16</sup>group] without any such request; and

- (b) any other assistance which the [<sup>F16</sup>group] may require, and which it is within the Authority's power to give, in relation to any such matters,

and the [<sup>F16</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to it for that purpose under this paragraph.

(9) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) Part 4 of the Enterprise Act; or

- (b) Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51),

by or in relation to the Authority on the ground that it should have been done by or in relation to the [F17CMA].

(10) Section 117 of the Enterprise Act (offence of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of paragraph (1) as if the reference in section 117(1)(a) and (2) to the [F17CMA] included a reference to the Authority.

#### Textual Amendments

- F1 Word in art. 29(1) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(2\)](#) (with art. 3)
- F2 Word in art. 29(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(3\)\(a\)](#) (with art. 3)
- F3 Words in art. 29(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(3\)\(b\)](#) (with art. 3)
- F4 Words in art. 29(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(3\)\(c\)](#) (with art. 3)
- F5 Word in art. 29(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(4\)](#) (with art. 3)
- F6 Word in art. 29(3)(b) inserted (31.12.2020) by S.I. 2019/93, Sch. 1 para. 12(2) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), [24](#))
- F7 Art. 29(3)(c) substituted for art. 29(3)(c)(d) (31.12.2020) by S.I. 2019/93, Sch. 1 para. 12(3) (as substituted by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), [24](#))
- F8 Words in art. 29(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(5\)\(a\)](#) (with art. 3)
- F9 Word in art. 29(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(5\)\(b\)](#) (with art. 3)
- F10 Words in art. 29(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(5\)\(c\)](#) (with art. 3)
- F11 Words in art. 29(4) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(5\)\(d\)](#) (with art. 3)
- F12 Art. 29(4A) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(6\)](#) (with art. 3)
- F13 Word in art. 29(5)-(7) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(4\)](#) (with art. 3)
- F14 Words in art. 29(8) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(7\)\(a\)\(i\)](#) (with art. 3)

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- F15** Words in art. 29(8) substituted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(7\)\(a\)\(ii\)](#) (with art. 3)
- F16** Word in art. 29(8) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(7\)\(b\)](#) (with art. 3)
- F17** Word in art. 29(9)(10) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 253\(8\)](#) (with art. 3)

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**Commencement Information**

- II** Art. 29 wholly in operation at 1.4.2007, see art. 1(2) and [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#))

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 293(10A) inserted by [2015 c. 8 \(N.I.\) Sch. 3 para. 2\(b\)](#)