

SCHEDULES

SCHEDULE 11

Section 185

THE COMPETITION COMMISSION

- 1 Schedule 7 to the 1998 Act is amended as follows.
- 2 In paragraph 1 (interpretation), after the definition of “newspaper merger reference” there is inserted—
 - ““newspaper panel member” means a member of the panel maintained under paragraph 22;”.
- 3 In paragraph 2 (appointment of members)—
 - (a) in sub-paragraph (1)(c), for the words from the beginning to “from” there is substituted “the members of”;
 - (b) in sub-paragraph (1), after paragraph (d) there is inserted—
 - “(e) one or more members appointed by the Secretary of State to serve on the Council.”;
 - (c) after sub-paragraph (1) there is inserted—
 - “(1A) A person may not be, at the same time, a member of the Commission and a member of the Tribunal.”;
 - (d) in sub-paragraph (2), for “(a)” there is substituted “(aa)”;
 - (e) in sub-paragraph (3), before paragraph (b) there is inserted—
 - “(aa) a newspaper panel member;”.
- 4 In paragraph 5 (the Council)—
 - (a) in sub-paragraph (1), the word “management” shall cease to have effect;
 - (b) in sub-paragraph (2)(a), after “Chairman” there is inserted “and any deputy chairmen of the Commission”;
 - (c) in sub-paragraph (2), before paragraph (c) there is inserted—
 - “(bb) the member or members appointed under paragraph 2(1)(e);”;and
 - (d) after sub-paragraph (3) there is inserted—
 - “(3A) Without prejudice to the question whether any other functions of the Commission are to be so discharged, the functions of the Commission under sections 106, 116, and 171 of the Enterprise Act 2002 (and under section 116 as applied for the purposes of references under Part 4 of that Act by section 176 of that Act) are to be discharged by the Council.”
- 5 In paragraph 6 (terms of appointment)—
 - (a) in sub-paragraph (2), for “five years at a time” there is substituted “eight years (but this does not prevent a re-appointment for the purpose only of continuing to act as a member of a group selected under paragraph 15 before the end of his term of office)”;and

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- (b) sub-paragraph (5) shall cease to have effect.
- 6 Paragraph 7(4) (approval of Treasury) shall cease to have effect.
- 7 Before paragraph 8 there is inserted—
- “7A The Commission may publish advice and information in relation to any matter connected with the exercise of its functions.”
- 8 In paragraph 9 (staff)—
- (a) sub-paragraph (2), and in sub-paragraph (3) the words “and the President”, shall cease to have effect;
- (b) in sub-paragraph (4), for paragraphs (a) and (b) there is substituted “the Secretary of State as to numbers and terms and conditions of service”.
- 9 Paragraph 10 (procedure) shall cease to have effect.
- 10 (1) Paragraph 15 (discharge of certain functions by groups) is amended as follows.
- (2) In sub-paragraph (1), after “sub-paragraph (7)” there is inserted “or (8)”.
- (3) For sub-paragraph (5) (members of newspaper panel) there is substituted—
- “(5) The Chairman must select one or more newspaper panel members to be members of the group dealing with functions relating to a newspaper merger reference and, if he selects at least three such members, the group may consist entirely of those members.”
- (4) In sub-paragraph (7) (Chairman’s role in setting aside merger references), paragraph (b) (and the word “or” before it) shall cease to have effect.
- (5) After sub-paragraph (7) there is inserted—
- “(8) The Chairman may exercise the power conferred by section 37(1), 48(1) or 64(1) of the Enterprise Act 2002 while a group is being constituted to perform a relevant general function of the Commission or, when it has been so constituted, before it has held its first meeting.”
- 11 (1) Paragraph 20 (requirement for two-thirds majority on reports) is amended as follows.
- (2) In sub-paragraph (1), for “sub-paragraph (2)” there is substituted “sub-paragraphs (2) to (9)”.
- (3) For sub-paragraph (2) there is substituted—
- “(2) For the purposes of Part 3 of the Enterprise Act 2002 (mergers) any decision of a group under section 35(1) or 36(1) of that Act (questions to be decided on non-public interest merger references) that there is an anti-competitive outcome is to be treated as a decision under that section that there is not an anti-competitive outcome if the decision is not that of at least two-thirds of the members of the group.
- (3) For the purposes of Part 3 of the Act of 2002, if the decision is not that of at least two-thirds of the members of the group—
- (a) any decision of a group under section 47 of that Act (questions to be decided on public interest merger references) that a relevant merger situation has been created is to be treated as a decision under that section that no such situation has been created;

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- (b) any decision of a group under section 47 of that Act that the creation of a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services is to be treated as a decision under that section that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
 - (c) any decision of a group under section 47 of that Act that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation is to be treated as a decision under that section that no such arrangements are in progress or in contemplation; and
 - (d) any decision of a group under section 47 of that Act that the creation of such a situation as is mentioned in paragraph (c) may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services is to be treated as a decision under that section that the creation of that situation may be expected not to result in such a substantial lessening of competition.
- (4) For the purposes of Part 3 of the Act of 2002, if the decision is not that of at least two-thirds of the members of the group—
- (a) any decision of a group under section 63 of that Act (questions to be decided on special public interest merger references) that a special merger situation has been created is to be treated as a decision under that section that no such situation has been created; and
 - (b) any decision of a group under section 63 of that Act that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation is to be treated as a decision under that section that no such arrangements are in progress or in contemplation.
- (5) For the purposes of Part 4 of the Act of 2002 (market investigations), if the decision is not that of at least two-thirds of the members of the group, any decision of a group under section 134 or 141 (questions to be decided on market investigation references) that a feature, or combination of features, of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom is to be treated as a decision that the feature or (as the case may be) combination of features does not prevent, restrict or distort such competition.
- (6) Accordingly, for the purposes of Part 4 of the Act of 2002, a group is to be treated as having decided under section 134 or 141 that there is no adverse effect on competition if—
- (a) one or more than one decision of the group is to be treated as mentioned in sub-paragraph (5); and
 - (b) there is no other relevant decision of the group.
- (7) In sub-paragraph (6) “relevant decision” means a decision which is not to be treated as mentioned in sub-paragraph (5) and which is that a feature, or combination of features, of a relevant market prevents, restricts or distorts

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competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

(8) Expressions used in sub-paragraphs (2) to (7) shall be construed in accordance with Part 3 or (as the case may be) 4 of the Act of 2002.

(9) Sub-paragraph (1) is also subject to specific provision made by or under other enactments about decisions which are not decisions of at least two-thirds of the members of a group.”

12 In paragraph 22 (panel of persons to act in newspaper merger references), for the words from the beginning to “suitable” there is substituted “There are to be members of the Commission appointed by the Secretary of State to form a panel of persons available”.