

SCHEDULES

SCHEDULE 8

Section 81

PRIVATE ACTIONS IN COMPETITION LAW

PART 1

COMPETITION ACT 1998

- 1 The Competition Act 1998 is amended in accordance with this Part.
- 2 For the heading of Chapter 4 of Part 1, substitute “Appeals, proceedings before the Tribunal and settlements relating to infringements of competition law”.
- 3 For the cross-heading preceding section 46, substitute “Appeals and proceedings before the Tribunal”.
- 4 (1) For section 47A substitute—

“47A Proceedings before the Tribunal: claims for damages etc.

- (1) A person may make a claim to which this section applies in proceedings before the Tribunal, subject to the provisions of this Act and Tribunal rules.
- (2) This section applies to a claim of a kind specified in subsection (3) which a person who has suffered loss or damage may make in civil proceedings brought in any part of the United Kingdom in respect of an infringement decision or an alleged infringement of—
 - (a) the Chapter I prohibition,
 - (b) the Chapter II prohibition,
 - (c) the prohibition in Article 101(1), or
 - (d) the prohibition in Article 102.
- (3) The claims are—
 - (a) a claim for damages;
 - (b) any other claim for a sum of money;
 - (c) in proceedings in England and Wales or Northern Ireland, a claim for an injunction.
- (4) For the purpose of identifying claims which may be made in civil proceedings, any limitation rules or rules relating to prescription that would apply in such proceedings are to be disregarded.
- (5) The right to make a claim in proceedings under this section does not affect the right to bring any other proceedings in respect of the claim.
- (6) In this Part (except in section 49C) “infringement decision” means—

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- (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed,
 - (b) a decision of the Tribunal on an appeal from a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
 - (c) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed.”
- (2) Section 47A of the Competition Act 1998 (as substituted by sub-paragraph (1)) applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.
- 5 (1) For section 47B substitute—

“47B Collective proceedings before the Tribunal

- (1) Subject to the provisions of this Act and Tribunal rules, proceedings may be brought before the Tribunal combining two or more claims to which section 47A applies (“collective proceedings”).
- (2) Collective proceedings must be commenced by a person who proposes to be the representative in those proceedings.
- (3) The following points apply in relation to claims in collective proceedings—
 - (a) it is not a requirement that all of the claims should be against all of the defendants to the proceedings,
 - (b) the proceedings may combine claims which have been made in proceedings under section 47A and claims which have not, and
 - (c) a claim which has been made in proceedings under section 47A may be continued in collective proceedings only with the consent of the person who made that claim.
- (4) Collective proceedings may be continued only if the Tribunal makes a collective proceedings order.
- (5) The Tribunal may make a collective proceedings order only—
 - (a) if it considers that the person who brought the proceedings is a person who, if the order were made, the Tribunal could authorise to act as the representative in those proceedings in accordance with subsection (8), and
 - (b) in respect of claims which are eligible for inclusion in collective proceedings.
- (6) Claims are eligible for inclusion in collective proceedings only if the Tribunal considers that they raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings.
- (7) A collective proceedings order must include the following matters—
 - (a) authorisation of the person who brought the proceedings to act as the representative in those proceedings,
 - (b) description of a class of persons whose claims are eligible for inclusion in the proceedings, and

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- (c) specification of the proceedings as opt-in collective proceedings or opt-out collective proceedings (see subsections (10) and (11)).
 - (8) The Tribunal may authorise a person to act as the representative in collective proceedings—
 - (a) whether or not that person is a person falling within the class of persons described in the collective proceedings order for those proceedings (a “class member”), but
 - (b) only if the Tribunal considers that it is just and reasonable for that person to act as a representative in those proceedings.
 - (9) The Tribunal may vary or revoke a collective proceedings order at any time.
 - (10) “Opt-in collective proceedings” are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.
 - (11) “Opt-out collective proceedings” are collective proceedings which are brought on behalf of each class member except—
 - (a) any class member who opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective proceedings, and
 - (b) any class member who—
 - (i) is not domiciled in the United Kingdom at a time specified, and
 - (ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings.
 - (12) Where the Tribunal gives a judgment or makes an order in collective proceedings, the judgment or order is binding on all represented persons, except as otherwise specified.
 - (13) The right to make a claim in collective proceedings does not affect the right to bring any other proceedings in respect of the claim.
 - (14) In this section and in section 47C, “specified” means specified in a direction made by the Tribunal.”
- (2) Section 47B of the Competition Act 1998 (as substituted by sub-paragraph (1)) applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.

6 After section 47B (as substituted by paragraph 5) insert—

“47C Collective proceedings: damages and costs

- (1) The Tribunal may not award exemplary damages in collective proceedings.
- (2) The Tribunal may make an award of damages in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person.

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- (3) Where the Tribunal makes an award of damages in opt-out collective proceedings, the Tribunal must make an order providing for the damages to be paid on behalf of the represented persons to—
 - (a) the representative, or
 - (b) such person other than a represented person as the Tribunal thinks fit.
- (4) Where the Tribunal makes an award of damages in opt-in collective proceedings, the Tribunal may make an order as described in subsection (3).
- (5) Subject to subsection (6), where the Tribunal makes an award of damages in opt-out collective proceedings, any damages not claimed by the represented persons within a specified period must be paid to the charity for the time being prescribed by order made by the Lord Chancellor under section 194(8) of the Legal Services Act 2007.
- (6) In a case within subsection (5) the Tribunal may order that all or part of any damages not claimed by the represented persons within a specified period is instead to be paid to the representative in respect of all or part of the costs or expenses incurred by the representative in connection with the proceedings.
- (7) The Secretary of State may by order amend subsection (5) so as to substitute a different charity for the one for the time being specified in that subsection.
- (8) A damages-based agreement is unenforceable if it relates to opt-out collective proceedings.
- (9) In this section—
 - (a) “charity” means a body, or the trustees of a trust, established for charitable purposes only;
 - (b) “damages” (except in the term “exemplary damages”) includes any sum of money which may be awarded by the Tribunal in collective proceedings (other than costs or expenses);
 - (c) “damages-based agreement” has the meaning given in section 58AA(3) of the Courts and Legal Services Act 1990.”

7 After section 47C (inserted by paragraph 6) insert—

“47D Proceedings under section 47A or collective proceedings: injunctions etc.

- (1) An injunction granted by the Tribunal in proceedings under section 47A or in collective proceedings—
 - (a) has the same effect as an injunction granted by the High Court, and
 - (b) is enforceable as if it were an injunction granted by the High Court.
- (2) In deciding whether to grant an injunction in proceedings under section 47A or in collective proceedings, the Tribunal must—
 - (a) in proceedings in England and Wales, apply the principles which the High Court would apply in deciding whether to grant an injunction under section 37(1) of the Senior Courts Act 1981, and
 - (b) in proceedings in Northern Ireland, apply the principles that the High Court would apply in deciding whether to grant an injunction.

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(3) Subsection (2) is subject to Tribunal rules which make provision of the kind mentioned in paragraph 15A(3) of Schedule 4 to the Enterprise Act 2002 (undertakings as to damages in relation to claims subject to the fast-track procedure).”

8 (1) After section 47D (inserted by paragraph 7) insert—

“47E Limitation or prescriptive periods for proceedings under section 47A and collective proceedings

(1) Subsection (2) applies in respect of a claim to which section 47A applies, for the purposes of determining the limitation or prescriptive period which would apply in respect of the claim if it were to be made in—

- (a) proceedings under section 47A, or
- (b) collective proceedings at the commencement of those proceedings.

(2) Where this subsection applies—

- (a) in the case of proceedings in England and Wales, the Limitation Act 1980 applies as if the claim were an action in a court of law;
- (b) in the case of proceedings in Scotland, the Prescription and Limitation (Scotland) Act 1973 applies as if the claim related to an obligation to which section 6 of that Act applies;
- (c) in the case of proceedings in Northern Ireland, the Limitation (Northern Ireland) Order 1989 applies as if the claim were an action in a court established by law.

(3) Where a claim is made in collective proceedings at the commencement of those proceedings (“the section 47B claim”), subsections (4) to (6) apply for the purpose of determining the limitation or prescriptive period which would apply in respect of the claim if it were subsequently to be made in proceedings under section 47A.

(4) The running of the limitation or prescriptive period in respect of the claim is suspended from the date on which the collective proceedings are commenced.

(5) Following suspension under subsection (4), the running of the limitation or prescriptive period in respect of the claim resumes on the date on which any of the following occurs—

- (a) the Tribunal declines to make a collective proceedings order in respect of the collective proceedings;
- (b) the Tribunal makes a collective proceedings order in respect of the collective proceedings, but the order does not provide that the section 47B claim is eligible for inclusion in the proceedings;
- (c) the Tribunal rejects the section 47B claim;
- (d) in the case of opt-in collective proceedings, the period within which a person may choose to have the section 47B claim included in the proceedings expires without the person having done so;
- (e) in the case of opt-out collective proceedings—
 - (i) a person domiciled in the United Kingdom chooses (within the period in which such a choice may be made) to

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- have the section 47B claim excluded from the collective proceedings, or
- (ii) the period within which a person not domiciled in the United Kingdom may choose to have the section 47B claim included in the collective proceedings expires without the person having done so;
- (f) the section 47B claim is withdrawn;
- (g) the Tribunal revokes the collective proceedings order in respect of the collective proceedings;
- (h) the Tribunal varies the collective proceedings order in such a way that the section 47B claim is no longer included in the collective proceedings;
- (i) the section 47B claim is settled with or without the Tribunal’s approval;
- (j) the section 47B claim is dismissed, discontinued or otherwise disposed of without an adjudication on the merits.
- (6) Where the running of the limitation or prescriptive period in respect of the claim resumes under subsection (5) but the period would otherwise expire before the end of the period of six months beginning with the date of that resumption, the period is treated as expiring at the end of that six month period.
- (7) This section has effect subject to any provision in Tribunal rules which defers the date on which the limitation or prescriptive period begins in relation to claims in proceedings under section 47A or in collective proceedings.”
- (2) Section 47E of the Competition Act 1998 does not apply in relation to claims arising before the commencement of this paragraph.
- 9 (1) Section 49 (further appeals) is amended in accordance with this paragraph.
- (2) In subsection (1)—
- (a) at the end of paragraph (a) insert “and”, and
- (b) omit paragraph (b) and the “and” at the end of that paragraph.
- (3) After subsection (1) insert—
- “(1A) An appeal lies to the appropriate court on a point of law arising from a decision of the Tribunal in proceedings under section 47A or in collective proceedings—
- (a) as to the award of damages or other sum (other than a decision on costs or expenses), or
- (b) as to the grant of an injunction.
- (1B) An appeal lies to the appropriate court from a decision of the Tribunal in proceedings under section 47A or in collective proceedings as to the amount of an award of damages or other sum (other than the amount of costs or expenses).
- (1C) An appeal under subsection (1A) arising from a decision in respect of a stand-alone claim may include consideration of a point of law arising from a finding of the Tribunal as to an infringement of a prohibition listed in section 47A(2).

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- (1D) In subsection (1C) “a stand-alone claim” is a claim—
- (a) in respect of an alleged infringement of a prohibition listed in section 47A(2), and
 - (b) made in proceedings under section 47A or included in collective proceedings.”
- (4) In subsection (2)(a), at the beginning insert “except as provided by subsection (2A),”.
- (5) After subsection (2) insert—
- “(2A) An appeal from a decision of the Tribunal in respect of a claim included in collective proceedings may be brought only by the representative in those proceedings or by a defendant to that claim.”
- 10 (1) After section 49 insert—

“Settlements relating to infringements of competition law

49A Collective settlements: where a collective proceedings order has been made

- (1) The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims in collective proceedings (a “collective settlement”) where—
 - (a) a collective proceedings order has been made in respect of the claims, and
 - (b) the Tribunal has specified that the proceedings are opt-out collective proceedings.
- (2) An application for approval of a proposed collective settlement must be made to the Tribunal by the representative and the defendant in the collective proceedings.
- (3) The representative and the defendant must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
- (4) Where there is more than one defendant in the collective proceedings, “defendant” in subsections (2) and (3) means such of the defendants as wish to be bound by the proposed collective settlement.
- (5) The Tribunal may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
- (6) On the date on which the Tribunal approves a collective settlement—
 - (a) if the period within which persons may opt out of or (in the case of persons not domiciled in the United Kingdom) opt in to the collective proceedings has expired, subsections (8) and (10) apply so as to determine the persons bound by the settlement;
 - (b) if that period has not yet expired, subsections (9) and (10) apply so as to determine the persons bound by the settlement.
- (7) If the period within which persons may opt out of the collective proceedings expires on a different date from the period within which persons not

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domiciled in the United Kingdom may opt in to the collective proceedings, the references in subsection (6) to the expiry of a period are to the expiry of whichever of those periods expires later.

- (8) Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order who—
- (a) were domiciled in the United Kingdom at the time specified for the purposes of determining domicile in relation to the collective proceedings (see section 47B(11)(b)(i)) and did not opt out of those proceedings, or
 - (b) opted in to the collective proceedings.
- (9) Where this subsection applies, a collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective proceedings order.
- (10) But a collective settlement is not binding on a person who—
- (a) opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
 - (b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective settlement.
- (11) This section does not affect a person’s right to offer to settle opt-in collective proceedings.
- (12) In this section and in section 49B, “specified” means specified in a direction made by the Tribunal.”

- (2) Section 49A of the Competition Act 1998 applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.
- 11 (1) After section 49A (inserted by paragraph 10) insert—

“49B Collective settlements: where a collective proceedings order has not been made

- (1) The Tribunal may, in accordance with this section and Tribunal rules, make an order approving the settlement of claims (a “collective settlement”) where—
- (a) a collective proceedings order has not been made in respect of the claims, but
 - (b) if collective proceedings were brought, the claims could be made at the commencement of the proceedings (disregarding any limitation or prescriptive period applicable to a claim in collective proceedings).
- (2) An application for approval of a proposed collective settlement must be made to the Tribunal by—
- (a) a person who proposes to be the settlement representative in relation to the collective settlement, and

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- (b) the person who, if collective proceedings were brought in respect of the claims, would be a defendant in those proceedings (or, where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).
- (3) The persons applying to the Tribunal under subsection (2) must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.
- (4) The Tribunal may make an order approving a proposed collective settlement (see subsection (8)) only if it first makes a collective settlement order.
- (5) The Tribunal may make a collective settlement order only—
 - (a) if it considers that the person described in subsection (2)(a) is a person who, if the order were made, the Tribunal could authorise to act as the settlement representative in relation to the collective settlement in accordance with subsection (7), and
 - (b) in respect of claims which, if collective proceedings were brought, would be eligible for inclusion in the proceedings (see section 47B(6)).
- (6) A collective settlement order must include the following matters—
 - (a) authorisation of the person described in subsection (2)(a) to act as the settlement representative in relation to the collective settlement, and
 - (b) description of a class of persons whose claims fall within subsection (5)(b).
- (7) The Tribunal may authorise a person to act as the settlement representative in relation to a collective settlement—
 - (a) whether or not that person is a person falling within the class of persons described in the collective settlement order for that settlement, but
 - (b) only if the Tribunal considers that it is just and reasonable for that person to act as the settlement representative in relation to that settlement.
- (8) Where the Tribunal has made a collective settlement order, it may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.
- (9) A collective settlement approved by the Tribunal is binding on all persons falling within the class of persons described in the collective settlement order.
- (10) But a collective settlement is not binding on a person who—
 - (a) opts out by notifying the settlement representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or
 - (b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the settlement representative that the claim should be included in the collective settlement.

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(11) In this section, “settlement representative” means a person who is authorised by a collective settlement order to act in relation to a collective settlement.”

(2) Section 49B of the Competition Act 1998 applies to claims arising before the commencement of this paragraph as it applies to claims arising after that time.

12 After section 49B (inserted by paragraph 11) insert—

“49C Approval of redress schemes by the CMA

- (1) A person may apply to the CMA for approval of a redress scheme.
- (2) The CMA may consider an application before the infringement decision to which the redress scheme relates has been made, but may approve the scheme only—
 - (a) after that decision has been made, or
 - (b) in the case of a decision of the CMA, at the same time as that decision is made.
- (3) In deciding whether to approve a redress scheme, the CMA may take into account the amount or value of compensation offered under the scheme.
- (4) The CMA may approve a redress scheme under subsection (2)(b) subject to a condition or conditions requiring the provision of further information about the operation of the scheme (including about the amount or value of compensation to be offered under the scheme or how this will be determined).
- (5) If the CMA approves a redress scheme subject to such a condition, it may—
 - (a) approve the scheme subject to other conditions;
 - (b) withdraw approval from the scheme if any conditions imposed under subsection (4) or paragraph (a) are not met;
 - (c) approve a redress scheme as a replacement for the original scheme (but may not approve that scheme subject to conditions).
- (6) An approved scheme may not be varied by the CMA or the compensating party.
- (7) But, where the CMA approves a redress scheme subject to a condition of the kind mentioned in subsection (4), subsection (6) does not prevent further information provided in accordance with the condition from forming part of the terms of the scheme.
- (8) The Secretary of State may make regulations relating to the approval of redress schemes, and the regulations may in particular—
 - (a) make provision as to the procedure governing an application for approval of a redress scheme, including the information to be provided with the application;
 - (b) provide that the CMA may approve a redress scheme only if it has been devised according to a process specified in the regulations;
 - (c) provide that the CMA may approve a redress scheme only if it is in a form, or contains terms, specified in the regulations (which may include terms requiring a settlement agreement under the scheme to be in a form, or contain terms, specified in the regulations);

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- (d) provide that the CMA may approve a redress scheme only if (so far as the CMA can judge from facts known to it) the scheme is intended to be administered in a manner specified in the regulations;
 - (e) describe factors which the CMA may or must take into account, or may not take into account, in deciding whether to approve a redress scheme.
- (9) The CMA must publish guidance with regard to—
- (a) applications for approval of redress schemes,
 - (b) the approval of redress schemes, and
 - (c) the enforcement of approved schemes, and in particular as to the criteria which the CMA intends to adopt in deciding whether to bring proceedings under section 49E(4).
- (10) Guidance under subsection (9) must be approved by the Secretary of State before it is published.
- (11) In this section and sections 49D and 49E—
- “approved scheme” means a redress scheme approved by the CMA,
 - “compensating party” means a person offering compensation under an approved scheme,
 - “infringement decision” means—
 - (a) a decision of the CMA that the Chapter I prohibition, the Chapter II prohibition, the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, or
 - (b) a decision of the Commission that the prohibition in Article 101(1) or the prohibition in Article 102 has been infringed, and
 - “redress scheme” means a scheme under which a person offers compensation in consequence of an infringement decision made in respect of that person.
- (12) For the purposes of this section and section 49E, “compensation”—
- (a) may be monetary or non-monetary, and
 - (b) may be offered to persons who have not suffered a loss as a result of the infringement decision to which the redress scheme relates.

49D Redress schemes: recovery of costs

- (1) The CMA may require a person making an application for approval of a redress scheme to pay some or all of the CMA’s reasonable costs relating to the application.
- (2) A requirement to pay costs is imposed by giving that person written notice specifying—
 - (a) the amount to be paid,
 - (b) how that amount has been calculated, and
 - (c) by when that amount must be paid.
- (3) A person required to pay costs under this section may appeal to the Tribunal against the amount.

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- (4) Where costs required to be paid under this section relate to an approved scheme, the CMA may withdraw approval from that scheme if the costs have not been paid by the date specified in accordance with subsection (2)(c).
- (5) Costs required to be paid under this section are recoverable by the CMA as a debt.

49E Enforcement of approved schemes

- (1) A compensating party is under a duty to comply with the terms of an approved scheme (“the duty”).
- (2) The duty is owed to any person entitled to compensation under the terms of the approved scheme.
- (3) Where such a person suffers loss or damage as a result of a breach of the duty, the person may bring civil proceedings before the court for damages, an injunction or interdict or any other appropriate relief or remedy.
- (4) Where the CMA considers that the compensating party is in breach of the duty, the CMA may bring civil proceedings before the court for an injunction or interdict or any other appropriate relief or remedy.
- (5) Subsection (4) is without prejudice to any right that a person has to bring proceedings under subsection (3).
- (6) In any proceedings brought under subsection (3) or (4), it is a defence for the compensating party to show that it took all reasonable steps to comply with the duty.
- (7) Where the CMA considers that it is no longer appropriate for the compensating party to be subject to the duty, the CMA may give notice in writing to that party stating that it is released from the duty.
- (8) Where a person has entered into a settlement agreement with the compensating party, that agreement remains enforceable notwithstanding the release of the compensating party under subsection (7) from the duty.
- (9) In this section “the court” means—
 - (a) in England and Wales, the High Court or the county court,
 - (b) in Northern Ireland, the High Court or a county court,
 - (c) in Scotland, the Court of Session or the sheriff.”

- 13 (1) Section 58 (findings of fact by CMA) is amended in accordance with this paragraph.
- (2) In subsection (1), after “the court” insert “or the Tribunal”.
- (3) In subsection (2)—
 - (a) in the definition of “Part I proceedings”, before paragraph (a) insert—
 - “(za) in respect of an infringement decision;”, and
 - (b) in the definition of “relevant party”, in paragraphs (a) and (b), for “is alleged to have infringed the prohibition” substitute “has been found to have infringed the prohibition or is alleged to have infringed the prohibition (as the case may be)”.
- (4) In subsection (3)—

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- (a) after “Rules of court” insert “or Tribunal rules”, and
- (b) after “the court” insert “or the Tribunal”.

(5) After subsection (3) insert—

“(4) In this section “the court” means—

- (a) in England and Wales or Northern Ireland, the High Court,
- (b) in Scotland, the Court of Session or the sheriff.”

14 (1) For section 58A substitute—

“58A Infringement decisions

- (1) This section applies to a claim in respect of an infringement decision which is brought in proceedings—
 - (a) before the court, or
 - (b) before the Tribunal under section 47A or 47B.
- (2) The court or the Tribunal is bound by the infringement decision once it has become final.
- (3) An infringement decision specified in section 47A(6)(a) or (b) becomes final—
 - (a) when the time for appealing against that decision expires without an appeal having been brought;
 - (b) where the decision is specified in section 47A(6)(a) and an appeal has been brought against the decision under section 46 or 47, when that appeal—
 - (i) has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision and the time for making any further appeal against that confirmatory decision expires without a further appeal having been brought;
 - (c) where an appeal has been brought in relation to the decision under section 49, when that appeal—
 - (i) in the case of an appeal against the infringement decision or against a decision which confirmed the infringement decision, has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision and the time for making any further appeal to the Supreme Court against that confirmatory decision expires without a further appeal having been brought; or
 - (d) where an appeal has been brought to the Supreme Court in relation to the decision, when that appeal—
 - (i) in the case of an appeal against a decision which confirmed the infringement decision, has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision.
- (4) An infringement decision specified in section 47A(6)(c) becomes final—

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- (a) when the time for appealing against that decision in the European Court expires without an appeal having been brought; or
 - (b) where such an appeal has been brought against the decision, when that appeal—
 - (i) has been withdrawn, dismissed or otherwise discontinued, or
 - (ii) has confirmed the infringement decision.
- (5) This section applies to the extent that the court or the Tribunal would not otherwise be bound by the infringement decision in question.
- (6) In this section “the court” means—
- (a) in England and Wales or Northern Ireland, the High Court,
 - (b) in Scotland, the Court of Session or the sheriff.”
- (2) Section 58A of the Competition Act 1998 (as substituted by sub-paragraph (1)) does not apply in relation to decisions made before the commencement of this paragraph.
- 15 (1) Section 59 (interpretation of Part 1) is amended in accordance with this paragraph.
- (2) In subsection (1), at the appropriate places insert—
- ““class member” has the meaning given in section 47B(8)(a);”;
 - ““collective proceedings” has the meaning given in section 47B(1);”;
 - ““collective proceedings order” means an order made by the Tribunal authorising the continuance of collective proceedings;”;
 - ““infringement decision”, except in section 49C, has the meaning given in section 47A(6);”;
 - ““injunction” includes an interim injunction;”;
 - ““opt-in collective proceedings” has the meaning given in section 47B(10);”;
 - ““opt-out collective proceedings” has the meaning given in section 47B(11);”;
 - ““representative” means a person who is authorised by a collective proceedings order to bring collective proceedings;”;
 - ““represented person” means a class member who—
 - (a) has opted in to opt-in collective proceedings,
 - (b) was domiciled in the United Kingdom at the time specified for the purposes of determining domicile (see section 47B(11)(b)(i)) and has not opted out of opt-out collective proceedings, or
 - (c) has opted in to opt-out collective proceedings;”.
- (3) In subsection (1), in the definition of “the court”, before “58” insert “49E,”.
- (4) After subsection (1) insert—
- “(1A) In this Part, in respect of proceedings in Scotland, “defendant” is to be read as “defender”.
 - (1B) Sections 41, 42, 45 and 46 of the Civil Jurisdiction and Judgments Act 1982 apply for the purpose of determining whether a person is regarded as “domiciled in the United Kingdom” for the purposes of this Part.”
- 16 In section 71 (regulations, orders and rules), after subsection (4)(ca) insert—

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“(cb) section 47C(7).”

- 17 (1) Schedule 8 (appeals) is amended in accordance with this paragraph.
- (2) In paragraph 2(1), for “46 or 47” substitute “46, 47 or 49D(3)”.
- (3) After paragraph 3A insert—
- “3B (1) This paragraph applies to an appeal under section 49D(3).
- (2) The Tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
- (3) The Tribunal may—
- (a) approve the amount of costs which is the subject of the appeal, or
- (b) impose a requirement to pay costs of a different amount.
- (4) The Tribunal may also give such directions, or take such other steps, as the CMA could itself have given or taken.
- (5) A requirement imposed by the Tribunal under sub-paragraph (3)(b) has the same effect, and may be enforced in the same manner, as a requirement imposed by the CMA under section 49D.”

PART 2

ENTERPRISE ACT 2002

- 18 The Enterprise Act 2002 is amended in accordance with this Part.
- 19 (1) Section 14 (constitution of Tribunal for particular proceedings and its decisions) is amended as follows.
- (2) In subsection (1), after “before it” insert “, including proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act,”.
- (3) After subsection (1) insert—
- “(1A) But in the case of proceedings relating to a claim under section 47A of the 1998 Act which is subject to the fast-track procedure (as described in Tribunal rules), the Tribunal may consist of a chairman only.”
- 20 In section 15 (Tribunal rules), in subsection (1), at the end insert “, including proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act.”
- 21 In section 16 (transfers of certain proceedings to and from Tribunal), in subsection (5), for “High Court or the Court of Session or” substitute “court of all or any part of”.
- 22 Schedule 4 (Tribunal: procedure) is amended in accordance with the following paragraphs of this Part.
- 23 In paragraph 1 (decisions of the Tribunal), for sub-paragraph (1)(a) substitute—
- “(a) state the reasons for the decision;
- (aa) state whether the decision was unanimous or taken by a majority or, where proceedings are heard by a chairman only, state that fact;”.

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24 After paragraph 1 insert—

“Enforcement of injunctions in England and Wales and Northern Ireland

1A (1) Where a person (“A”) fails to comply with an injunction granted by the Tribunal in proceedings under section 47A or 47B of the 1998 Act, the Tribunal may certify the matter to the High Court.

(2) The High Court may enquire into the matter.

(3) If, after hearing any witnesses who may be produced against or on behalf of A, and any statement made by or on behalf of A, the High Court is satisfied that A would have been in contempt of court if the injunction had been granted by the High Court, the High Court may deal with A as if A were in contempt.”

25 In each of paragraphs 4(c) and 5(1)(c)—

(a) for “47B(6)” substitute “47C(3) or (4)”; and

(b) for “specified body concerned” substitute “representative in the proceedings under section 47B of that Act”.

26 In paragraph 6—

(a) for sub-paragraph (a) substitute—

“(a) awards damages to a person in respect of a claim made or continued on behalf of that person (but is not the subject of an order under section 47C(3) or (4) of that Act); or”;

(b) in sub-paragraph (b)—

(i) for “an individual” substitute “a person”,

(ii) for “his behalf” substitute “behalf of that person”; and

(c) in the full-out words at the end, for “individual” substitute “person”.

27 In paragraph 7—

(a) for “specified body” substitute “representative”; and

(b) for “individual” substitute “person”.

28 In paragraph 9—

(a) the existing provision is numbered as sub-paragraph (1), and

(b) after that provision insert—

“(2) In this Schedule, where a paragraph is capable of applying to proceedings relating to the approval of a collective settlement under section 49A or 49B of the 1998 Act, any reference in that paragraph to “proceedings” includes a reference to those proceedings.”

29 In paragraph 11(2), for paragraph (a) substitute—

“(a) make further provision as to procedural aspects of the operation of the limitation or prescriptive periods in relation to claims which may be made in proceedings under section 47A of the 1998 Act, as set out in section 47E(3) to (6) of that Act;”.

30 For paragraph 13 substitute—

“13 (1) Tribunal rules may provide for the Tribunal—

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- (a) to reject a claim made under section 47A of the 1998 Act or a section 47B claim if it considers that there are no reasonable grounds for making it;
- (b) to reject a section 47B claim if—
 - (i) the Tribunal declines to make a collective proceedings order in respect of the proceedings under section 47B of the 1998 Act,
 - (ii) the Tribunal makes a collective proceedings order in respect of the proceedings, but the order does not provide that the claim in question is eligible for inclusion in the proceedings,
 - (iii) the Tribunal revokes the collective proceedings order in respect of the proceedings, or
 - (iv) the Tribunal varies the collective proceedings order in such a way that the claim in question is no longer included in the proceedings;
- (c) to reject a section 47B claim if the claim had been previously made in proceedings under section 47A of the 1998 Act by a person who has not consented to its being continued in proceedings under section 47B of that Act.

(2) In this paragraph, “a section 47B claim” means a claim made in proceedings under section 47B of the 1998 Act at the commencement of those proceedings.”

31 After paragraph 15 insert—

“Fast-track procedure

- 15A (1) Tribunal rules may make provision in relation to a fast-track procedure for claims made in proceedings under section 47A of the 1998 Act, including describing the factors relevant to determining whether a claim is suitable to be dealt with according to that procedure.
- (2) Tribunal rules may make different provision for claims in proceedings under section 47A of the 1998 Act which are and which are not subject to the fast-track procedure.
- (3) Tribunal rules may, in particular, provide for the Tribunal to—
- (a) grant an interim injunction on a claim in proceedings under section 47A of the 1998 Act which is subject to the fast-track procedure to a person who has not given an undertaking as to damages, or
 - (b) impose a cap on the amount that a person may be required to pay under an undertaking as to damages given on the granting of such an interim injunction.
- (4) In sub-paragraph (3) “an undertaking as to damages” means an undertaking to pay damages which a person sustains as a result of the interim injunction and which the Tribunal considers the person to whom the injunction is granted should pay.

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Collective proceedings

- 15B (1) Tribunal rules may make provision in relation to collective proceedings under section 47B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—
- (a) the procedure governing an application for a collective proceedings order;
 - (b) the factors which the Tribunal must take into account in deciding whether a claim is suitable to be brought in collective proceedings (but rules need not make provision in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
 - (c) the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a representative in collective proceedings;
 - (d) the procedure by which the Tribunal is to reach a decision as to whether to make a collective proceedings order;
 - (e) the procedure by which a person may opt in or opt out of collective proceedings;
 - (f) the factors which the Tribunal must take into account in deciding whether to vary or revoke a collective proceedings order;
 - (g) the assessment of damages in collective proceedings;
 - (h) the payment of damages in collective proceedings, including the procedure for publicising an award of damages;
 - (i) the effect of judgments and orders in collective proceedings.

Collective settlements

- 15C (1) Tribunal rules may make provision in relation to collective settlements under sections 49A and 49B of the 1998 Act.
- (2) Rules under sub-paragraph (1) must in particular make provision as to the following matters—
- (a) the procedure governing an application for approval of a proposed collective settlement;
 - (b) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to make a collective settlement order (but rules need not make provision in connection with the determination as to whether claims raise the same, similar or related issues of fact or law);
 - (c) where section 49B applies, the factors which the Tribunal must take into account in deciding whether to authorise a person to act as a settlement representative in relation to a collective settlement;
 - (d) where section 49B applies, the procedure by which the Tribunal is to reach a decision as to whether to make a collective settlement order;

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- (e) the factors which the Tribunal must take into account in deciding whether to approve a proposed collective settlement;
- (f) the procedure by which the Tribunal is to reach a decision as to whether to approve a collective settlement;
- (g) the procedure by which a person may opt in or opt out of a collective settlement;
- (h) the payment of compensation under a collective settlement, including the procedure for publicising a compensation award.”

32 In paragraph 17 (conduct of the hearing)—

(a) after sub-paragraph (1)(h) insert—

“(ha) allowing the Tribunal to order payments in respect of the representation of a party to proceedings under section 47A or 47B of the 1998 Act, where the representation by a legal representative was provided free of charge;”;

(b) in sub-paragraph (2)—

(i) for “an individual” substitute “a person”; and

(ii) for “that individual” substitute “that person”;

(c) after sub-paragraph (2) insert—

“(2A) Rules under sub-paragraph (1)(h) may provide for costs or expenses to be awarded to or against a person on whose behalf a claim is made or continued in proceedings under section 47B of the 1998 Act in respect of an application in the proceedings made by that person (where that application is not made by the representative in the proceedings on that person’s behalf).”; and

(d) in sub-paragraph (3), for “an individual” substitute “a person”.

33 After paragraph 20 insert—

“Stay or sist of proceedings

20A (1) In relation to proceedings in England and Wales or Northern Ireland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the stay of the proceedings, including as to—

- (a) the circumstances in which a stay may be ordered or removed at the request of a party to the proceedings,
- (b) the circumstances in which the proceedings may be stayed at the instance of the Tribunal, and
- (c) the procedure to be followed.

(2) In relation to proceedings in Scotland under section 47A or 47B of the 1998 Act, Tribunal rules may make provision as to the sist of the proceedings, including as to—

- (a) the circumstances in which a sist may be granted or recalled at the request of a party to the proceedings,
- (b) the circumstances in which the proceedings may be sisted at the instance of the Tribunal, and
- (c) the procedure to be followed.

(3) Rules under sub-paragraph (1) or (2) may in particular make provision in relation to the stay or sist of proceedings under section 47A or 47B

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which relate to a claim in respect of an infringement decision (as defined in section 47A(6)) which has not become final (see section 58A of the 1998 Act).”

34 After paragraph 21 insert—

“Injunctions

21A Tribunal rules may make provision in relation to the grant of injunctions (including interim injunctions) in proceedings under section 47A or 47B of the 1998 Act.”

35 In paragraph 23(3), for “an individual” substitute “a person”.

36 In paragraph 25, after “transfer of” insert “all or any part of”.

PART 3

COURTS AND LEGAL SERVICES ACT 1990

37 In the Courts and Legal Services Act 1990, in section 58AA (damages-based agreements), after subsection (10) insert—

“(11) Subsection (1) is subject to section 47C(8) of the Competition Act 1998.”