

SCHEDULE

Article 2(2)

TRANSITIONAL PROVISIONS AND SAVINGS: THE COMPETITION  
AND MARKETS AUTHORITY AND COMPETITION REFORM

*Introductory*

**Interpretation**

1.—(1) In this Schedule—

“the Act” means the Enterprise and Regulatory Reform Act 2013;

“amendments” includes repeals;

“the CMA” means the Competition and Markets Authority;

“the commencement date” means 1st April 2014;

“the Commission” means the Competition Commission;

“enactment” includes—

(a) an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978<sup>(1)</sup>), and

(b) an enactment comprised in (or in an instrument made under) an Act of the Scottish Parliament, a Measure or Act of the National Assembly for Wales or Northern Ireland legislation;

“the OFT” means the Office of Fair Trading; and

“the 2002 Act” means the Enterprise Act 2002<sup>(2)</sup>.

(2) For the purposes of this Schedule, the OFT has publicly launched a market study before the commencement date if it has publicly begun before that date activity which, if proposed to be undertaken by the CMA on or after that date, would require the publication of a market study notice under section 130A of the 2002 Act.

(3) References in this Schedule to amendments made by provisions of the Act include references to any other amendments made by virtue of the Act in consequence of, or for the purposes of, those amendments.

*Abolition of OFT and Competition Commission*

**Abolition of OFT and Competition Commission**

2.—(1) Anything which, immediately before the commencement date, is in the process of being done by or in relation to the transferor may, so far as it relates to a relevant function, be continued by or in relation to the transferee.

(2) Anything done (or having effect as if done) by or in relation to the transferor for the purposes of or in connection with a relevant function is, if in force or effective immediately before the commencement date, to have effect as if done by or in relation to the transferee so far as that is required for continuing its effect on or after the commencement date.

(3) In the application of sub-paragraph (1) or (2)—

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(1) 1978 c.30.

(2) 2002 c.40.

*Status: This is the original version (as it was originally made).*

- (a) any reference made before the commencement date under section 22, 33, 45, 62, 131 or 132 of the 2002 Act<sup>(3)</sup> or section 59 of the Legal Services Act 2007<sup>(4)</sup> to the Commission is to be treated, so far as provided by those sub-paragraphs, as a reference under that section to the chair of the CMA for the constitution of a CMA group,
  - (b) where any functions exercisable immediately before the commencement date by a Commission group are to be exercisable on or after that date by a CMA group—
    - (i) any person who, immediately before the commencement date, is a member of the Commission group is to be treated, on or after that date, as a member of the CMA group concerned if the person is a member of the CMA panel,
    - (ii) any person who, immediately before the commencement date, is the chairman of the Commission group is to be treated, on or after that date, as the chair of the CMA group if the person is a member of the CMA panel, and
    - (iii) the persons treated as mentioned in sub-paragraph (i) or (ii) are to be treated, on or after the commencement date, as if they have been constituted in accordance with Part 3 of Schedule 4 to the Act as the chair and other members of the CMA group (and that Part applies accordingly in relation to the operation of the group), and
  - (c) an authorisation given (whether by warrant or otherwise) before the commencement date, so far as it authorises a named member, or member of staff, of the OFT or the Commission, continues to authorise that individual (but no other) on or after the commencement date if, and only if, the individual is a member, or (as the case may be) a member of staff, of the CMA.
- (4) Any enactment, instrument or other document passed or made before the commencement date is to have effect, so far as necessary for the purposes of or in consequence of sub-paragraphs (1) to (3), as if any references (however expressed) to the transferor were references to the transferee.
- (5) Sub-paragraphs (1) to (4)—
- (a) do not apply in relation to any matter dealt with by a transfer scheme under section 27 of the Act or by any other transitional provision made by virtue of the Act; and
  - (b) do not apply so as to convert an appointment as a member of the OFT or the Commission into an appointment as a member of the CMA.
- (6) Any enactment, instrument or other document passed or made before the commencement date is to have effect, so far as necessary for the purposes of or in consequence of its continued effect by virtue of sub-paragraph (8), (10) or (11) below or any of paragraphs 4 to 7, 9 to 12 and 16, as if any references (however expressed) to the transferor were references to the transferee.
- (7) The repeals of section 45<sup>(4)</sup> of the Competition Act 1998<sup>(5)</sup> and section 2<sup>(3)</sup> of the 2002 Act<sup>(6)</sup> (general conversion of references to the Monopolies and Mergers Commission and the Director General of Fair Trading) by paragraphs 220 and 229 of Schedule 5 to the Act do not apply

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(3) Section 22 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003 (c.21), paragraph 67 of Schedule 5 and paragraph 2 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 (c.24) and paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079). Section 33 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003, paragraph 72 of Schedule 5 and paragraph 3 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 and paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004. Section 45 was amended by paragraph 9 of Schedule 16 to the Communications Act 2003 and paragraph 85 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013. Section 62 was amended by paragraph 14 of Schedule 16 and paragraph 1 of Schedule 19 to the Communications Act 2003 and paragraph 104 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013. Section 131 was amended by section 33 of, and paragraph 2 of Schedule 10 and paragraph 163 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013. Section 132 was amended by section 34 of, and paragraph 164 of Schedule 5, paragraph 3 of Schedule 10 and paragraph 10 of Schedule 12 to, the Enterprise and Regulatory Reform Act 2013.

(4) 2007 c.29. Section 59 was amended by paragraph 111 of Schedule 6 to the Enterprise and Regulatory Reform Act 2013.

(5) 1998 c.41. Section 45 was amended by section 187 of and paragraph 38 of Schedule 25 to the Enterprise Act 2002 and repealed by paragraph 220 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(6) 2002 c.40. Section 2 was repealed by paragraph 229 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

so far as those sections create references to the transferor to which sub-paragraph (4) or (6) above are capable of applying.

(8) The repeal of paragraph 12(1) to (3) of Schedule 7 to the Competition Act 1998 (annual accounts)(7) by paragraph 222 of Schedule 5 to the Act does not apply in relation to any accounts for the financial year ending with 31st March 2014; and those provisions of the Act of 1998 continue to apply as if the obligations of the Commission in relation to its accounts were obligations of the CMA in relation to the Commission's accounts.

(9) The CMA must prepare accounts (and send them to the Comptroller and Auditor General) under section 5 of the Government Resources and Accounts Act 2000(8) for the financial year ending with 31st March 2014 in respect of the OFT.

(10) The repeals of paragraph 12A of Schedule 7 to the Competition Act 1998(9) and section 4(1) to (3) of the 2002 Act(10) (annual reports) by paragraphs 222 and 229 of Schedule 5 to the Act do not apply in relation to any report for the financial year ending with 31st March 2014; and those provisions of the Act of 1998 and the 2002 Act continue to apply as if the obligation to make (and, in the case of the OFT, lay) a report about the Commission or OFT were an obligation of the CMA to make (or lay) such a report.

(11) The repeal of Part 2 of Schedule 3 to the 2002 Act (transfers between the Commission and the Competition Service) by paragraph 226 of Schedule 5 to the Act does not apply in relation to any transfer effected by virtue of that Part before the commencement date so far as that Part is capable of continuing to apply on or after the commencement date in relation to the transfer.

(12) The abolition of the OFT or the Commission does not affect the validity of anything done (or having effect as if done) by or in relation to the transferor before the commencement date.

(13) In this paragraph—

“CMA Board” has the same meaning as in Schedule 4 to the Act (see Part 2 of that Schedule);

“CMA group” means a group constituted in accordance with Part 3 of Schedule 4 to the Act;

“CMA panel” has the same meaning as in Schedule 4 to the Act (see Part 3 of that Schedule);

“Commission group” means a group constituted under any enactment to perform functions of the Commission;

“the Council” means the Competition Commission Council;

“relevant function” means any function of the transferor which is transferred to the transferee by virtue of Part 3 or 4 of the Act or sub-paragraph (6) above;

“transferee” means the CMA, the CMA Board, a CMA group, the chair of the CMA, another member of the CMA or (as the case may be) a member of staff of the CMA;

“transferor” means the OFT, the Commission, the Council, a Commission group, the chairman of the OFT or Commission, another member of the OFT or Commission or a member of staff of the OFT or Commission;

and references in this paragraph to things done include references to things omitted to be done.

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(7) Paragraph 12(1) to (3) of Schedule 7 was repealed by paragraph 222 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(8) 2000 c.20. Section 5 was amended by paragraph 1 of Schedule 1 to the Statute Law (Repeals) Act 2004 (c.14), section 43 of the Constitutional Reform and Governance Act 2010 (c.25), paragraph 14 of Schedule 7 to the Companies Act 1985 (International Accounting Standards and Other Accounting Amendments) Regulations 2004 (S.I. 2004/2947) and paragraph 214 of the Schedule to the Companies Act (Consequential Amendments etc) Order 2008 (S.I. 2008/948).

(9) Paragraph 12A of Schedule 7 was inserted by section 186 of the Enterprise Act 2002 and repealed by paragraph 222 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

(10) Section 4 was repealed by paragraph 229 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

## Mergers

### General: existing matters

**3.—(1)** The amendments made by Chapter 1 of Part 4 of the Act, section 49 or 50 of the Act and paragraphs 16 to 20, 21(3) to (5), (6)(a) and (8) to (10), 23, 24, 26, 28, 29 and 35 of Schedule 15 to the Act (mergers) apply in relation to—

- (a) any reference under section 22, 33, 45 or 62 of the 2002 Act made before the commencement date, or
- (b) any possible reference under section 22, 33, 45 or 62 of that Act which arose before that date,

as they apply in relation to any such reference made, or arising, on or after that date.

(2) In particular—

- (a) the amendments mentioned in sub-paragraph (1) apply in relation to investigations begun, notices given, reports published, undertakings accepted or adopted and orders made or adopted before the commencement date as they apply in relation to investigations begun, notices given, reports published, undertakings accepted or adopted and orders made or adopted on or after that date, and
- (b) the amendments made by section 29(2) to (9) of the Act (investigation powers) apply in relation to a matter which, before the commencement date, was the subject of a reference or possible reference under section 22, 33, 45 or 62 of the 2002 Act as they apply in relation to—
  - (i) a matter that is or has been the subject of a reference made on or after that date under section 22, 33, 45 or 62 of the 2002 Act, or
  - (ii) a matter that is or has been the subject, on or after that date, of a possible reference under section 22, 33, 45 or 62 of that Act.

(3) Sub-paragraph (2) is without prejudice to the generality of sub-paragraph (1).

(4) This paragraph is subject to paragraphs 4 to 7 and 16.

### Investigation powers

**4.—(1)** The amendments made by section 29 of the Act (investigation powers) do not apply in relation to any notice given before the commencement date under section 109 of the 2002 Act<sup>(11)</sup>.

(2) The amendments made by paragraphs 16 to 20, 21(3) to (5), (6)(a) and (8) to (10), 23, 24, 26, 28, 29 and 35 of Schedule 15 to the Act (other amendments in relation to investigation powers) do not apply in relation to any notice given before the commencement date under section 31, 34B, 46C or (as the case may be) 99(2) of the 2002 Act<sup>(12)</sup>.

### Undertakings and orders

**5.—(1)** The amendments made by section 30(1) of, and paragraphs 2(5) to (7) and 4(2) of Schedule 7 to, the Act (initial and interim undertakings) do not apply in relation to undertakings

<sup>(11)</sup> Section 109 was amended by section 29 of and paragraph 143 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013 (c.24).

<sup>(12)</sup> Section 31 was repealed by paragraph 17 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013. Sections 34B and 46C were inserted by paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 (S.I. 2004/1079) and repealed by paragraph 20 and 24 respectively of Schedule 15 to the Enterprise and Regulatory Reform Act 2013. Section 99 was amended by paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 and paragraph 133 of Schedule 5, paragraph 10 of Schedule 8 and paragraph 35 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

accepted under section 71 of, or paragraph 1 of Schedule 7 to, the 2002 Act<sup>(13)</sup> before the commencement date.

(2) In their continued application by virtue of sub-paragraph (1)—

- (a) section 71 of the 2002 Act has effect as if there were no power under that section for an undertaking under that section to be varied or superseded,
- (b) section 80(4) of that Act continues to permit the varying or superseding of an undertaking under section 71 which has been adopted under section 80(3)<sup>(14)</sup>, and
- (c) paragraph 1 of Schedule 7 to that Act has effect as if there were no power under that paragraph for an undertaking accepted or adopted under that paragraph to be varied or superseded.

(3) The amendments made by paragraphs 3(5) to (7) and 4(5) of Schedule 7 to the Act (interim orders) do not apply in relation to orders adopted before the commencement date.

(4) The amendments made by section 31 of the Act (financial penalties in relation to interim measures) do not apply in relation to a failure to comply which—

- (a) occurs before the commencement date, and
- (b) does not continue on or after it,

but otherwise do apply in relation to undertakings accepted, or orders made, before that date.

### **Time-limits: general**

**6.—**(1) The amendments made by paragraphs 2 to 4 and 7 to 12 of Schedule 8 to the Act (time-limits) do not apply in relation to any possible reference under section 22 or 33 of the 2002 Act<sup>(15)</sup> which is active before the commencement date.

(2) For the purposes of this paragraph, a possible reference is active before the commencement date if (and only if) condition A, B, or C is met.

(3) Condition A is that, before the commencement date, the OFT—

- (a) has not received a merger notice under section 96 of the 2002 Act<sup>(16)</sup> in relation to the subject-matter of the reference,
- (b) either—
  - (i) has notified any relevant person that it has received a satisfactory submission for the purpose of considering whether to make the reference, or
  - (ii) has received the case from the European Commission as mentioned in section 34A(1) of that Act<sup>(17)</sup>, and
- (c) has neither made the reference nor decided not to make it.

(4) Condition B is that, before the commencement date—

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<sup>(13)</sup> Section 71 and paragraph 1 of Schedule 7 were repealed by section 30 of and paragraph 4 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013 respectively.

<sup>(14)</sup> Section 80 was amended by paragraph 120 of Schedule 5 and paragraphs 2 and 3 of Schedule 7 to the Enterprise and Regulatory Reform Act 2013.

<sup>(15)</sup> [2002 c.40](#). Section 22 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003 ([c.21](#)), paragraph 67 of Schedule 5 and paragraph 2 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 ([c.24](#)) and paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 ([S.I.2004/1079](#)). Section 33 was amended by paragraph 1 of Schedule 19 to the Communications Act 2003, paragraph 72 of Schedule 5 and paragraph 3 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013 and paragraph 1 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004.

<sup>(16)</sup> Section 96 was amended by paragraph 132 of Schedule 5 and paragraph 8 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

<sup>(17)</sup> Section 34A was inserted by paragraph 2 of the Schedule to the EC Merger Control (Consequential Amendments) Regulations 2004 and amended by article 4 of the Treaty of Lisbon (Changes in Terminology) Order 2011 ([S.I. 2011/1043](#)) and paragraph 73 of Schedule 5 and paragraph 19 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

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

- (a) the OFT has received a merger notice under section 96 of the 2002 Act in relation to the subject-matter of the reference,
  - (b) the period under section 97 of that Act(18) for considering the notice has not expired,
  - (c) the notice has not been rejected under section 99(5) of that Act(19) or withdrawn, and
  - (d) the OFT has neither made the reference nor decided not to make it.
- (5) Condition C is that, before the commencement date—
- (a) the OFT has received a merger notice under section 96 of the 2002 Act in relation to the subject-matter of the reference,
  - (b) the notice has been rejected under section 99(5) of that Act or withdrawn,
  - (c) the OFT has subsequently notified any relevant person that it has received a satisfactory submission for the purpose of considering whether to make the reference, and
  - (d) the OFT has neither made the reference nor decided not to make it.
- (6) In its application, on or after the commencement date, to any possible reference under section 22 or 33 of the 2002 Act which is active before that date, section 97 of that Act has effect as if, for subsections (5) and (6), there were substituted—

“(5) The CMA may by notice to the person who gave the merger notice extend the period for considering a merger notice if it considers that the person has failed (with or without reasonable excuse) to comply with any requirement of a notice under section 109 or (before, on or after the commencement date) with a notice given before that date under section 99(2).

(6) An extension under subsection (5) shall end—

- (a) when the person concerned provides the information or documents to the satisfaction of the CMA or (as the case may be) appears as a witness in accordance with the requirements of the CMA; or
- (b) if earlier, when the CMA cancels the extension.”

(7) In its application, on or after the commencement date, to any possible reference under section 22 or 33 of the 2002 Act which is active before that date, subsection (2) of section 98 of that Act(20) has effect as if, for that subsection, there were substituted—

“(2) A notice under section 97(5)—

(a) shall also be given within 5 days of—

- (i) the end of the period within which the information is to be provided and which is stated in the notice under section 99(2)(21); or
- (ii) the date for compliance with a notice served under section 109; and

(b) shall also inform the person who gave the merger notice of—

- (i) the CMA’s opinion as mentioned in section 97(5) (in the case of a notice under section 99(2)) or the permitted purpose included in the notice in accordance with section 109(4) (in the case of a notice under section 109); and
- (ii) the CMA’s intention to extend the period for considering the merger notice.”

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(18) Section 97 was amended by paragraph 2 of the Schedule to the Merger Control (Consequential Amendments) Regulations 2004 and repealed by paragraph 9 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

(19) Section 99 was amended by paragraph 2 of the Schedule to the Merger Control (Consequential Amendments) Regulations 2004 and paragraph 133 of Schedule 5, paragraph 10 of Schedule 8 and paragraph 35 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

(20) Section 98 was repealed by paragraph 9 of Schedule 8 to the Enterprise and Regulatory Reform Act 2013.

(21) Section 99(2) was repealed by paragraph 35 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

(8) In its application, on or after the commencement date, to any possible reference under section 22 or 33 of the 2002 Act which is active before that date, section 110B of that Act has effect as if—

(a) for subsection (1)(d) there were substituted—

“(d) the making of the reference is prevented by section 96(3);”,

(b) subsection (1)(f) and (2)(f) were omitted, and

(c) in subsection (2)(d), for the words “the expiry of the initial period” there were substituted “the time when the reference becomes prevented”.

(9) The amendments made by paragraph 7 of Schedule 8 to the Act (time-limits for consideration of undertakings in lieu of references) do not apply in relation to any case received, on or after the commencement date, by the CMA from the European Commission as mentioned in section 34A(1) of the 2002 Act where the European Commission’s decision or deemed decision (whenever made) relates to—

(a) a notification, under Article 4(1) of the EU Merger Regulation, which is made before the commencement date, or

(b) a request, under Article 4(4) of that Regulation, which is made before that date.

(10) In this paragraph—

“EU Merger Regulation” means Council Regulation (EC) No. 139/2004<sup>(22)</sup> of 20th January 2004 on the control of concentrations between undertakings;

“relevant person” means any person carrying on an enterprise to which the possible reference relates and which has or might have ceased, or (as the case may be) would or might cease, to be distinct (within the meaning of section 26 of the 2002 Act).

### **Time-limits for duty to remedy adverse effects**

7. The amendments made by paragraph 6 of Schedule 8 to the Act (time-limits for remedying adverse effects) do not apply in relation to a report of the Commission—

(a) of the kind mentioned in section 41(1) of the 2002 Act<sup>(23)</sup>, and

(b) published before the commencement date.

### *Markets*

#### **General: existing matters**

8.—(1) The amendments made by Chapter 2 of Part 4 of the Act or section 49 or 50 of the Act (markets) apply in relation to—

(a) any reference made under section 131 or 132 of the 2002 Act<sup>(24)</sup> before the commencement date, or

(b) any possible reference under section 131 or 132 of the 2002 Act which arose before that date,

as they apply in relation to any such reference made, or arising, on or after that date.

<sup>(22)</sup> OJ No L24, 29.1.2004, p1.

<sup>(23)</sup> Section 41 was amended by paragraph 81 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

<sup>(24)</sup> Section 131 was amended by section 33 of, and paragraph 2 of Schedule 10 and paragraph 163 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013. Section 132 was amended by section 34 of, and paragraph 164 of Schedule 5, paragraph 3 of Schedule 10 and paragraph 10 of Schedule 12 to, the Enterprise and Regulatory Reform Act 2013.

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

(2) In particular, the amendments mentioned in sub-paragraph (1) apply in relation to investigations begun, notices given, reports published, undertakings accepted and orders made before the commencement date as they apply in relation to investigations begun, notices given, reports published, undertakings accepted and orders made on or after that date.

(3) Sub-paragraph (2) is without prejudice to the generality of sub-paragraph (1).

(4) This paragraph is subject to paragraphs 9 to 12 and 16.

### **Public interest interventions**

9.—(1) The amendments made by section 35 of, and Schedule 10 to, the Act (public interest interventions in markets investigations) do not apply in relation to—

- (a) any reference made under section 131 or 132 of the 2002 Act before the commencement date, or
- (b) any case where the OFT has published a notice of a proposed undertaking in lieu under section 155(1) or (4) of the 2002 Act<sup>(25)</sup> before the commencement date.

(2) In their application to cases where the OFT has publicly launched a market study before the commencement date but sub-paragraph (1) does not apply, sections 139 to 140A of the 2002 Act have effect as if—

- (a) section 139(A1) provided for section 139 to apply where the OFT has publicly launched a market study in relation to a matter,
- (b) the permitted period for the purposes of section 139(1) were the period beginning with the public launch of the market study and ending with—
  - (i) the acceptance by the CMA of an undertaking under section 154 instead of the making of a reference under section 131 in relation to the matter,
  - (ii) the publication of notice of the fact that the CMA has otherwise decided not to make such a reference in relation to the matter, or
  - (iii) the making of such a reference in relation to the matter,
- (c) section 140(1)(a) and (b) required an intervention notice under section 139(1) to state—
  - (i) the matter to which the publicly launched market study relates, and
  - (ii) the date of the public launch,
- (d) the references in section 140(4B)(b) and 140A(1) to preparing a market study report in relation to a matter within the period permitted by section 131B(4) were references to preparing a report on the market study concerned in relation to a matter,
- (e) sections 140(4C) and (5)(zc) and 140A(2), (3)(c) and (11) were omitted,
- (f) in section 140(6)(a) the word “”(zc),” were omitted,
- (g) the reference in section 140A(1)(b) to the CMA being required to publish the report were a reference to the CMA publishing the report on the market study concerned,
- (h) section 140A(3)(b) required the CMA not to publish the report but to give it to the Secretary of State, and
- (i) the reference in section 140A(10) to the market study report were a reference to the report.

<sup>(25)</sup> Section 155 was amended by paragraph 188 of Schedule 5 and paragraph 23 of Schedule 10 to the Enterprise and Regulatory Reform Act 2013.



### **Investigation powers**

**10.**—(1) The amendments made by section 36 of, and Schedule 11 to, the Act (investigation powers) do not apply in relation to any notice given before the commencement date under section 174 of the 2002 Act<sup>(26)</sup> or section 109 of that Act<sup>(27)</sup> as applied by section 176 of that Act<sup>(28)</sup>.

(2) In their continued application by virtue of sub-paragraph (1), sections 109 to 116 of the 2002 Act<sup>(29)</sup> and any related provisions have effect without the amendments made by section 29 of the Act.

(3) In its application to cases where the OFT has publicly launched a market study before the commencement date—

- (a) section 174(1)(a) of the 2002 Act has effect as if the reference to the publication of a market study notice were a reference to the public launch of a market study,
- (b) section 174C(1) has effect as if for paragraphs (a) and (b) there were substituted “the CMA publishes the report on the market study concerned or (as the case may be) gives it to the Secretary of State under section 140A(3)(b)”, and
- (c) section 174C(2) has effect as if for paragraphs (a) and (b) there were substituted “the publication of the report or (as the case may be) the giving of it to the Secretary of State”.

### **Time-limits for market studies and market references**

**11.**—(1) The amendments made by paragraphs 1, 2, and 10 of Schedule 12 to the Act (market studies and time-limits) do not apply in relation to any market study publicly launched by the OFT before the commencement date (or any reference made under section 131 or 132 of that Act before that date).

(2) The amendments made by paragraphs 3 and 6 of Schedule 12 to the Act (time-limits for market investigations and reports) do not apply in relation to any reference made under section 131 or 132 of the 2002 Act before the commencement date.

### **Time-limits for duty to remedy adverse effects**

**12.** The amendments made by paragraphs 4 and 5 of Schedule 12 to the Act (time-limits for remedying adverse effects) do not apply in relation to a report of the Commission—

- (a) of the kind mentioned in section 138(1) of the 2002 Act<sup>(30)</sup>, and
- (b) published before the commencement date.

## *Anti-trust*

### **General: existing anti-trust investigations**

**13.** Subject to paragraph 14, the amendments made by Chapter 3 of Part 4 of the Act (anti-trust) apply in relation to any investigation begun before, and continuing on, the commencement date as they apply in relation to any investigation begun on or after that date.

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<sup>(26)</sup> Section 174 was amended by section 36 and paragraph 204 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

<sup>(27)</sup> Section 109 was amended by section 29 of and paragraph 143 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

<sup>(28)</sup> Section 176 was repealed by paragraph 4 of Schedule 11 to the Enterprise and Regulatory Reform Act 2013.

<sup>(29)</sup> Section 116 was amended by paragraph 150 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

<sup>(30)</sup> Section 138 was amended by paragraph 171 of Schedule 5, paragraph 4 of Schedule 9 and paragraph 4 of Schedule 12 to the Enterprise and Regulatory Reform Act 2013.

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

## Penalties

14. The amendments made by section 40 of the Act (civil enforcement of investigation powers) do not apply in relation to any requirement imposed on a person under the Competition Act 1998(31) before the commencement date.

### *Price control references*

#### Recovery of CMA's costs in respect of price control references

15.—(1) The amendments made by section 54 of, and paragraphs 42 to 45 of Schedule 15 to, the Act (recovery of CMA's costs in respect of price control references) do not apply in relation to a determination on a price control reference if the notice of the appeal which gave rise to the price control reference was received by the Competition Appeal Tribunal before the commencement date.

(2) For the purposes of this paragraph, “price control reference” means a price control matter referred to the Commission before the commencement date or to the CMA on or after that date by virtue of section 193 of the Communications Act 2003(32) and “price control matter” has the same meaning as in that section.

### *General*

#### Enactments applied by other enactments

16.—(1) Subject as follows, this Schedule applies in relation to enactments as applied by other enactments as it applies in relation to the enactments themselves.

(2) In its application to provisions applied by Part 4 of the 2002 Act, paragraph 3(1) has effect as if the references to sections 22, 33, 45 or 62 of the 2002 Act were references to sections 131 or 132 of that Act.

(3) Paragraph 4(1) does not apply in relation to any notice given before the commencement date under section 109 of the 2002 Act as applied by section 176 of that Act (for which see paragraph 10).

(4) In its application to provisions applied by the Enterprise Act 2002 (Protection of Legitimate Interests) Order 2003(33), paragraph 3 has effect as if the references to sections 22, 33, 45 or 62 of the 2002 Act were references to article 5 of that Order.

(5) In its application to provisions applied by virtue of Schedule 4ZA to the Water Industry Act 1991(34), paragraph 3 has effect as if the references to sections 22, 33, 45 or 62 of the 2002 Act were references to section 32 of the Act of 1991(35).

(6) In their application to functions exercisable under the 2002 Act concurrently with a sectoral regulator, paragraphs 8 to 12 (other than paragraphs 9(2), 10(3) and 11(1)) have effect as if any reference to the OFT includes a reference to the sectoral regulator concerned.

(7) In their application to sectoral regulators (and without prejudice to paragraphs 8(1) and 9(1)), sections 139(A1)(b) and (1B) and 140A(2)(a) of the 2002 Act and any related provisions have effect as if the references to consultation under section 169 of that Act in respect of a decision of the kind mentioned in section 169(6)(a)(i) of that Act included references to consultation begun before the

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(31) 1998 c.41.

(32) 2003 c.21. Section 193 was amended by paragraph 98 of Schedule 6 and paragraph 44 of Schedule 15 to the Enterprise and Regulatory Reform Act 2013.

(33) S.I. 2003/1592, amended by S.I. 2013/610, 2003/3180.

(34) 1991 c.56. Schedule 4ZA was inserted by paragraph 1 of Schedule 6 to the Enterprise Act 2002 and amended by section 36 of the Water Act 2003 (c. 37).

(35) Section 32 was amended by section 70 of the Enterprise Act 2002.

commencement date in respect of a decision of the kind mentioned in section 169(6)(a)(i) of that Act as it had effect before that date.

(8) In this paragraph “sectoral regulator” means—

- (a) the Office of Communications,
- (b) the Gas and Electricity Markets Authority,
- (c) the Water Services Regulation Authority,
- (d) the Office of Rail Regulation,
- (e) the Northern Ireland Authority for Utility Regulation,
- (f) the Civil Aviation Authority, or
- (g) Monitor.

(9) This paragraph is subject to any provision made otherwise than by this Schedule and dealing specifically with the enactments as applied.