

## SCHEDULES

### SCHEDULE 10

Sections 54 and 66(5).

#### REGULATORS

##### PART I

##### MONOPOLIES

- 1 The amendments of the Fair Trading Act 1973 made by sections 66 and 67 of this Act are to have effect, not only in relation to the jurisdiction of the Director under the provisions amended, but also in relation to the jurisdiction under those provisions of each of the following—
- (a) the Director General of Telecommunications;
  - (b) the Director General of Electricity Supply;
  - (c) the Director General of Electricity Supply for Northern Ireland;
  - (d) the Director General of Water Services;
  - (e) the Rail Regulator;
  - (f) the Director General of Gas Supply; and
  - (g) the Director General of Gas for Northern Ireland.

##### PART II

##### THE PROHIBITIONS

##### *Telecommunications*

- 2 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 50 of the Telecommunications Act 1984 (functions under 1973 and 1980 Acts) are no longer exercisable by the Director General of Telecommunications.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 3 (general duties of Secretary of State and Director), in subsection (3)(b), for “section 50” substitute “section 50(1) or (2)”.
- (4) In section 3, after subsection (3A), insert—
- “(3B) Subsections (1) and (2) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 50(3) below (“Competition Act functions”).
  - (3C) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by subsection (1) or (2) above (“a general matter”), if it is a matter to which

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the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in relation to any of the matters mentioned in subsection (3) or (3A) above, regard may not be had to any general matter.”

(5) Section 50 is amended as follows.

(6) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or

(b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with telecommunications.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 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).”

(7) In subsection (4), omit paragraph (c) and the “and” immediately after it.

(8) In subsection (5), omit “or (3)”.

(9) In subsection (6), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(10) In subsection (7), omit “or the 1980 Act”.

#### *Gas*

3 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 36A of the Gas Act 1986 (functions with respect to competition) are no longer exercisable by the Director General of Gas Supply.

(2) Accordingly, that Act is amended as follows.

(3) In section 4 (general duties of Secretary of State and Director), after subsection (3), insert—

“(3A) Subsections (1) to (3) above and section 4A below do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 36A below (“Competition Act functions”).

(3B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (3) above or section 4A below, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

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- (4) Section 36A is amended as follows.
- (5) For subsection (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to the carrying on of activities to which this subsection applies.
- (3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 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) In subsection (5)—
- (a) for “transferred by”, in each place, substitute “mentioned in”;
- (b) after paragraph (b), insert “and”;
- (c) omit paragraph (d) and the “and” immediately before it.
- (7) In subsection (6), omit “or (3)”.
- (8) In subsection (7), for paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (9) In subsection (8)—
- (a) omit “or under the 1980 Act”;
- (b) for “or (3) above” substitute “above and paragraph 1 of Schedule 10 to the Competition Act 1998”.
- (10) In subsection (9), omit “or the 1980 Act”.
- (11) In subsection (10), for the words from “transferred” to the end substitute “mentioned in subsection (2) or (3) above.”

#### *Electricity*

- 4 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 43 of the Electricity Act 1989 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply.
- (2) Accordingly, that Act is amended as follows.
- (3) In section 3 (general duties of Secretary of State and Director), after subsection (6), insert—

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“(6A) Subsections (1) to (5) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 43(3) below (“Competition Act functions”).

(6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (5) above (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in the exercise of any function mentioned in subsection (6) above, regard may not be had to any general matter.”

(4) Section 43 is amended as follows.

(5) For subsection (3) substitute—

“(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,

which relate to commercial activities connected with the generation, transmission or supply of electricity.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 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) In subsection (4), omit paragraph (c) and the “and” immediately after it.

(7) In subsection (5), omit “or (3)”.

(8) In subsection (6), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) In subsection (7), omit “or the 1980 Act”.

#### *Water*

5 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions exercisable by virtue of subsection (3) of section 31 of the Water Industry Act 1991 (functions of Director with respect to competition) are no longer exercisable by the Director General of Water Services.

(2) Accordingly, that Act is amended as follows.

(3) In section 2 (general duties with respect to water industry), in subsection (6)(a), at the beginning, insert “subject to subsection (6A) below”.

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- (4) In section 2, after subsection (6), insert—
- “(6A) Subsections (2) to (4) above do not apply in relation to anything done by the Director in the exercise of functions assigned to him by section 31(3) below (“Competition Act functions”).
- (6B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (2) to (4) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”
- (5) Section 31 is amended as follows.
- (6) For subsection (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the supply of water or securing a supply of water or with the provision or securing of sewerage services.”
- (7) In subsection (4)—
- (a) for “to (3)” substitute “and (2)”;  
(b) omit paragraph (c) and the “and” immediately before it.
- (8) After subsection (4), insert—
- “(4A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director General of Fair Trading are to be read as including a reference to the Director (except in sections 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).”
- (9) In subsection (5), omit “or in subsection (3) above”.
- (10) In subsection (6), omit “or in subsection (3) above”.
- (11) In subsection (7), omit “or (3)”.
- (12) In subsection (8), for paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (13) In subsection (9), omit “or the 1980 Act”.

#### *Railways*

- 6 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by subsection (3) of section 67 of the Railways Act 1993

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(respective functions of the Regulator and the Director etc) are no longer exercisable by the Rail Regulator.

(2) Accordingly, that Act is amended as follows.

(3) In section 4 (general duties of the Secretary of State and the Regulator), after subsection (7), insert—

“(7A) Subsections (1) to (6) above do not apply in relation to anything done by the Regulator in the exercise of functions assigned to him by section 67(3) below (“Competition Act functions”).

(7B) The Regulator may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of subsections (1) to (6) above, if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”

(4) Section 67 is amended as follows.

(5) For subsection (3) substitute—

“(3) The Regulator shall be entitled to exercise, concurrently with the Director, the functions of the Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or
  - (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to the supply of railway services.

(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to the Director are to be read as including a reference to the Regulator (except in sections 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) In subsection (4), omit paragraph (c) and the “and” immediately after it.

(7) In subsection (6)(a), omit “or (3)”.

(8) In subsection (8), for paragraph (b) substitute—

“(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.

(9) In subsection (9)—

- (a) omit “or under the 1980 Act”;
- (b) for “or (3) above” substitute “above and paragraph 1 of Schedule 10 to the Competition Act 1998”.

### PART III

#### THE PROHIBITIONS: NORTHERN IRELAND

##### *Electricity*

- 7 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by paragraph (3) of Article 46 of the Electricity (Northern Ireland) Order 1992 (functions with respect to competition) are no longer exercisable by the Director General of Electricity Supply for Northern Ireland.
- (2) Accordingly, that Order is amended as follows.
- (3) In Article 6 (general duties of the Director), after paragraph (2), add—
- “(3) Paragraph (1) does not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 46(3) (“Competition Act functions”).
- (4) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by paragraph (1) (“a general matter”), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function; but that is not to be taken as implying that, in the exercise of any function mentioned in Article 4(7) or paragraph (2), regard may not be had to any general matter.”
- (4) Article 46 is amended as follows.
- (5) For paragraph (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- which relate to commercial activities connected with the generation, transmission or supply of electricity.
- (3A) 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 Director General of Fair Trading are to be read as including a reference to the Director (except in sections 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) In paragraph (4), omit sub-paragraph (c) and the “and” immediately after it.
- (7) In paragraph (5), omit “or (3)”.
- (8) In paragraph (6), for sub-paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (9) In paragraph (7), omit “or the 1980 Act”.

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### *Gas*

- 8 (1) In consequence of the repeal by this Act of provisions of the Competition Act 1980, the functions transferred by paragraph (3) of Article 23 of the Gas (Northern Ireland) Order 1996 (functions with respect to competition) are no longer exercisable by the Director General of Gas for Northern Ireland.
- (2) Accordingly, that Order is amended as follows.
- (3) In Article 5 (general duties of the Department and Director), after paragraph (4), insert—
- “(4A) Paragraphs (2) to (4) do not apply in relation to anything done by the Director in the exercise of functions assigned to him by Article 23(3) (“Competition Act functions”).
- (4B) The Director may nevertheless, when exercising any Competition Act function, have regard to any matter in respect of which a duty is imposed by any of paragraphs (2) to (4), if it is a matter to which the Director General of Fair Trading could have regard when exercising that function.”
- (4) Article 23 is amended as follows.
- (5) For paragraph (3) substitute—
- “(3) The Director shall be entitled to exercise, concurrently with the Director General of Fair Trading, the functions of that Director under the provisions of Part I of the Competition Act 1998 (other than sections 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, or
- (b) conduct of the kind mentioned in section 18(1) of that Act, connected with the conveyance, storage or supply of gas.
- (3A) 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 Director General of Fair Trading are to be read as including a reference to the Director (except in sections 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) In paragraph (4)—
- (a) for “transferred by”, in each place, substitute “mentioned in”;
- (b) after sub-paragraph (b), insert “and”;
- (c) omit sub-paragraph (d) and the “and” immediately before it.
- (7) In paragraph (5), omit “or (3)”.
- (8) In paragraph (6), for sub-paragraph (b) substitute—
- “(b) Part I of the Competition Act 1998 (other than sections 38(1) to (6) and 51),”.
- (9) In paragraph (7)—
- (a) omit “or under the 1980 Act”;
- (b) for “or (3)” substitute “and paragraph 1 of Schedule 10 to the Competition Act 1998”.



- (10) In paragraph (8), omit “or the 1980 Act”.
- (11) In paragraph (9), for the words from “transferred” to the end substitute “mentioned in paragraph (2) or (3).”

## PART IV

### UTILITIES: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *The Telecommunications Act 1984 (c. 12)*

- 9 (1) The Telecommunications Act 1984 is amended as follows.
- (2) In section 13 (licence modification references to Competition Commission), for subsections (9) and (10) substitute—
  - “(9) The provisions mentioned in subsection (9A) are to apply in relation to references under this section as if—
    - (a) the functions of the Competition Commission in relation to those references were functions under the Fair Trading Act 1973 (in this Act referred to as “the 1973 Act”);
    - (b) the expression “merger reference” included a reference under this section;
    - (c) in section 70 of the 1973 Act—
      - (i) references to the Secretary of State were references to the Director, and
      - (ii) the reference to three months were a reference to six months.
  - (9A) The provisions are—
    - (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
    - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
    - (c) section 24 of the Competition Act 1980 (modification of provisions about performance of such functions).
  - (10) For the purposes of references under this section, the Secretary of State is to appoint not less than three members of the Competition Commission.
  - (10A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (10) to be members of the group.”
- (3) In section 14, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 16 (securing compliance with licence conditions), in subsection (5), after paragraph (a), omit “or” and after paragraph (b), insert “or
  - (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (5) In section 50 (functions under 1973 and 1980 Acts), after subsection (6), insert—

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“(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—

- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
- (b) paragraph 1 of Schedule 2 to the Deregulation and Contracting Out Act 1994,

as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”

(6) In section 95 (modification by orders under other enactments)—

- (a) in subsection (1), omit “or section 10(2)(a) of the 1980 Act”;
- (b) in subsection (2)—
  - (i) after paragraph (a), insert “or”;
  - (ii) omit paragraph (c) and the “or” immediately before it;
- (c) in subsection (3), omit “or the 1980 Act”.

(7) In section 101(3) (general restrictions on disclosure of information)—

- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
- (b) after paragraph (m), insert—
  - “(n) the Competition Act 1998”.

(8) At the end of section 101, insert—

“(6) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (5) of this section.”

*The Gas Act 1986 (c. 44)*

10 (1) The Gas Act 1986 is amended as follows.

(2) In section 24 (modification references to the Competition Commission), for subsection (7) substitute—

“(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the Fair Trading Act 1973;
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the Fair Trading Act 1973—
  - (i) references to the Secretary of State were references to the Director, and
  - (ii) the reference to three months were a reference to six months.

(7A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the Fair Trading Act 1973;

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- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the Competition Act 1980 (modification of provisions about performance of such functions).”
- (3) In section 25, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 27 (modification by order under other enactments)—
  - (a) in subsection (1), omit “or section 10(2)(a) of the Competition Act 1980”;
  - (b) in subsection (3)(a), omit from “or” to “competition reference”;
  - (c) in subsection (6), omit “or the said Act of 1980”.
- (5) In section 28 (orders for securing compliance with certain provisions), in subsection (5), after paragraph (aa), omit “or” and after paragraph (b), insert “or
  - (c) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 42(3) (general restrictions on disclosure of information)—
  - (a) omit paragraphs (e) and (f) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after paragraph (n), insert—
    - “(o) the Competition Act 1998”.
- (7) At the end of section 42, insert—
  - “(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

*The Water Act 1989 (c. 15)*

- 11 In section 174(3) of the Water Act 1989 (general restrictions on disclosure of information)—
- (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after paragraph (l), insert—
    - “(l) the Competition Act 1998”.

*The Electricity Act 1989 (c. 29)*

- 12 (1) The Electricity Act 1989 is amended as follows.
- (2) In section 12 (modification references to Competition Commission), for subsections (8) and (9) substitute—
- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
    - (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
    - (b) the expression “merger reference” included a reference under this section;

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- (c) in section 70 of the 1973 Act—
  - (i) references to the Secretary of State were references to the Director, and
  - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
  - (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under subsection (9) to be members of the group.”
- (3) In section 13, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 15 (modification by order under other enactments)—
  - (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “or”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (3), omit “or the 1980 Act”.
- (5) In section 25 (orders for securing compliance), in subsection (5), after paragraph (b), omit “or” and after paragraph (c), insert “or
  - (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In section 43 (functions with respect to competition), after subsection (6), insert—
 

“(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—

  - (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
  - (b) paragraph 4 of Schedule 2 to the Deregulation and Contracting Out Act 1994,

as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (7) In section 57(3) (general restrictions on disclosure of information)—
  - (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after paragraph (no), insert—
 

“(nop) the Competition Act 1998”.

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(8) At the end of section 57, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

*The Water Industry Act 1991 (c. 56)*

13 (1) The Water Industry Act 1991 is amended as follows.

(2) In section 12(5) (determinations under conditions of appointment)—

- (a) after “this Act”, insert “or”;
- (b) omit “or the 1980 Act”.

(3) In section 14 (modification references to Competition Commission), for subsections (7) and (8) substitute—

“(7) The provisions mentioned in subsection (7A) are to apply in relation to references under this section as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
- (b) the expression “merger reference” included a reference under this section;
- (c) in section 70 of the 1973 Act—
  - (i) references to the Secretary of State were references to the Director, and
  - (ii) the reference to three months were a reference to six months.

(7A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).

(8) For the purposes of references under this section, the Secretary of State is to appoint not less than eight members of the Competition Commission.

(8A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select one or more of the members appointed under subsection (8) to be members of the group.”

(4) In section 15, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).

(5) In section 17 (modification by order under other enactments)—

- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
- (b) in subsection (2)—
  - (i) after paragraph (a), insert “or”;
  - (ii) omit paragraph (c) and the “or” immediately before it;
- (c) in subsection (4), omit “or the 1980 Act”.

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

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- (6) In section 19 (exceptions to duty to enforce), after subsection (1), insert—
- “(1A) The Director shall not be required to make an enforcement order, or to confirm a provisional enforcement order, if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 19(3), after “subsection (1) above”, insert “or, in the case of the Director, is satisfied as mentioned in subsection (1A) above,”.
- (8) In section 31 (functions of Director with respect to competition), after subsection (8), insert—
- “(8A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—
- (a) subsection (2) above and paragraph 1 of Schedule 10 to the Competition Act 1998, or
- (b) paragraph 8 of Schedule 2 to the Deregulation and Contracting Out Act 1994,
- as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”
- (9) After section 206(9) (restriction on disclosure of information), insert—
- “(9A) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (9) of this section.”
- (10) In Schedule 15 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
- (b) after the entry relating to the Railways Act 1993, insert the entry—
- “The Competition Act 1998”.

*The Water Resources Act 1991 (c. 57)*

- 14 In Schedule 24 to the Water Resources Act 1991 (disclosure of information), in Part II (enactments in respect of which disclosure may be made)—
- (a) omit the entries relating to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976;
- (b) after the entry relating to the Coal Industry Act 1994, insert the entry—
- “The Competition Act 1998”.

*The Railways Act 1993 (c. 43)*

- 15 (1) The Railways Act 1993 is amended as follows.
- (2) In section 13 (modification references to the Competition Commission), for subsection (8) substitute—

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

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- “(8) The provisions mentioned in subsection (8A) are to apply in relation to references under this section as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) the expression “merger reference” included a reference under this section;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the Competition Act 1980 (in this Part referred to as “the 1980 Act”) (modification of provisions about performance of such functions).”
- (3) In section 14, omit subsection (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In section 16 (modification by order under other enactments)—
- (a) in subsection (1), omit paragraph (b) and the “or” immediately before it;
  - (b) in subsection (2)—
    - (i) after paragraph (a), insert “or”;
    - (ii) omit paragraph (c) and the “or” immediately before it;
  - (c) in subsection (5), omit “or the 1980 Act”.
- (5) In section 22, after subsection (6), insert—
- “(6A) Neither the Director General of Fair Trading nor the Regulator may exercise, in respect of an access agreement, the powers given by section 32 (enforcement directions) or section 35(2) (interim directions) of the Competition Act 1998.
- (6B) Subsection (6A) does not apply to the exercise of the powers given by section 35(2) in respect of conduct—
- (a) which is connected with an access agreement; and
  - (b) in respect of which section 35(1)(b) of that Act applies.”
- (6) In section 55 (orders for securing compliance), after subsection (5), insert—
- “(5A) The Regulator shall not make a final order, or make or confirm a provisional order, in relation to a licence holder or person under closure restrictions if he is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.”
- (7) In section 55—
- (a) in subsection (6), after “subsection (5)”, insert “or (5A)”;

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

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- (b) in subsection (11), for “subsection (10)” substitute “subsections (5A) and (10)”.
- (8) Omit section 131 (modification of Restrictive Trade Practices Act 1976).
- (9) In section 145(3) (general restrictions on disclosure of information)—
  - (a) omit paragraphs (d) and (e) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after paragraph (q), insert—
    - “(qq) the Competition Act 1998.”
- (10) After section 145(6), insert—
  - “(6A) Information obtained by the Regulator in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to subsections (1) to (6) of this section.”

*The Channel Tunnel Rail Link Act 1996 (c. 61)*

- 16 (1) The Channel Tunnel Rail Link Act 1996 is amended as follows.
- (2) In section 21 (duties as to exercise of regulatory functions), in subsection (6), at the end of the paragraph about regulatory functions, insert “other than any functions assigned to him by virtue of section 67(3) of that Act (“Competition Act functions”).
- (7) The Regulator may, when exercising any Competition Act function, have regard to any matter to which he would have regard if—
  - (a) he were under the duty imposed by subsection (1) or (2) above in relation to that function; and
  - (b) the matter is one to which the Director General of Fair Trading could have regard if he were exercising that function.”
- (3) In section 22 (restriction of functions in relation to competition etc.), for subsection (3) substitute—
  - “(3) The Rail Regulator shall not be entitled to exercise any functions assigned to him by section 67(3) of the Railways Act 1993 (by virtue of which he exercises concurrently with the Director General of Fair Trading certain functions under Part I of the Competition Act 1998 so far as relating to matters connected with the supply of railway services) in relation to—
    - (a) any agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act that have been entered into or taken by, or
    - (b) any conduct of the kind mentioned in section 18(1) of that Act that has been engaged in by,
 a rail link undertaker in connection with the supply of railway services, so far as relating to the rail link.”



## PART V

### MINOR AND CONSEQUENTIAL AMENDMENTS: NORTHERN IRELAND

#### *The Electricity (Northern Ireland) Order 1992*

- 17 (1) The Electricity (Northern Ireland) Order 1992 is amended as follows.
- (2) In Article 15 (modification references to Competition Commission), for paragraphs (8) and (9) substitute—
- “(8) The provisions mentioned in paragraph (8A) are to apply in relation to references under this Article as if—
- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
  - (b) “merger reference” included a reference under this Article;
  - (c) in section 70 of the 1973 Act—
    - (i) references to the Secretary of State were references to the Director, and
    - (ii) the reference to three months were a reference to six months.
- (8A) The provisions are—
- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
  - (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
  - (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).
- (9) The Secretary of State may appoint members of the Competition Commission for the purposes of references under this Article.
- (9A) In selecting a group to perform the Commission’s functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under paragraph (9) to be members of the group.”
- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
- (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (2)—
    - (i) after sub-paragraph (a), insert “or”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (3), omit “or the 1980 Act”.
- (5) In Article 28 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert “or
- (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In Article 46 (functions with respect to competition), after paragraph (6), insert—

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

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“(6A) Section 93B of the 1973 Act (offences of supplying false or misleading information) is to have effect so far as relating to functions exercisable by the Director by virtue of—

- (a) paragraph (2) and paragraph 1 of Schedule 10 to the Competition Act 1998, or
- (b) paragraph 5 of Schedule 2 to the Deregulation and Contracting Out Act 1994,

as if the reference in section 93B(1)(a) to the Director General of Fair Trading included a reference to the Director.”

(7) In Article 61(3) (general restrictions on disclosure of information)—

- (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
- (b) after sub-paragraph (t), add—  
“ (u) the Competition Act 1998”.

(8) At the end of Article 61, insert—

“(7) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (6).”

(9) In Schedule 12, omit paragraph 16 (which amends the Restrictive Trade Practices Act 1976).

*The Gas (Northern Ireland) Order 1996*

18 (1) The Gas (Northern Ireland) Order 1996 is amended as follows.

(2) In Article 15 (modification references to the Competition Commission), for paragraph (9) substitute—

“(9) The provisions mentioned in paragraph (9A) are to apply in relation to references under this Article as if—

- (a) the functions of the Competition Commission in relation to those references were functions under the 1973 Act;
- (b) “merger reference” included a reference under this Article;
- (c) in section 70 of the 1973 Act—
  - (i) references to the Secretary of State were references to the Director, and
  - (ii) the reference to three months were a reference to six months.

(9A) The provisions are—

- (a) sections 70 (time limit for report on merger) and 85 (attendance of witnesses and production of documents) of the 1973 Act;
- (b) Part II of Schedule 7 to the Competition Act 1998 (performance of the Competition Commission’s general functions); and
- (c) section 24 of the 1980 Act (modification of provisions about performance of such functions).”

- (3) In Article 16, omit paragraph (2) (which falls with the repeal of the Restrictive Trade Practices Act 1976).
- (4) In Article 18 (modification by order under other statutory provisions)—
  - (a) in paragraph (1), omit sub-paragraph (b) and the “or” immediately before it;
  - (b) in paragraph (3)—
    - (i) after sub-paragraph (a), insert “or”;
    - (ii) omit sub-paragraph (c) and the “or” immediately before it;
  - (c) in paragraph (5), omit “or the 1980 Act”.
- (5) In Article 19 (orders for securing compliance), in paragraph (5), after sub-paragraph (b), omit “or” and after sub-paragraph (c), insert “or
  - (d) that the most appropriate way of proceeding is under the Competition Act 1998.”
- (6) In Article 44(4) (general restrictions on disclosure of information)—
  - (a) omit sub-paragraphs (f) and (g) (which refer to the Restrictive Trade Practices Act 1976 and the Resale Prices Act 1976);
  - (b) after sub-paragraph (u), add—
    - “(v) the Competition Act 1998”.
- (7) At the end of Article 44, insert—
  - “(8) Information obtained by the Director in the exercise of functions which are exercisable concurrently with the Director General of Fair Trading under Part I of the Competition Act 1998 is subject to sections 55 and 56 of that Act (disclosure) and not to paragraphs (1) to (7).”