

SCHEDULES

SCHEDULE 2

Section 3(1)(b).

EXCLUSIONS: OTHER COMPETITION SCRUTINY

PART I

FINANCIAL SERVICES

The Financial Services Act 1986 (c. 60)

- 1 (1) The Financial Services Act 1986 is amended as follows.
- (2) For section 125 (effect of the Restrictive Trade Practices Act 1976), substitute—

“125 The Competition Act 1998: Chapter I prohibition

- (1) The Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a recognised self-regulating organisation,
 - (b) a recognised investment exchange, or
 - (c) a recognised clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (2) Subject to subsection (3) below, the Chapter I prohibition does not apply to an agreement for the constitution of—
- (a) a self-regulating organisation,
 - (b) an investment exchange, or
 - (c) a clearing house,
- to the extent to which the agreement relates to the regulating provisions of the body concerned.
- (3) The exclusion provided by subsection (2) above applies only if—
- (a) the body has applied for a recognition order in accordance with the provisions of this Act; and
 - (b) the application has not been determined.
- (4) The Chapter I prohibition does not apply to a decision made by—
- (a) a recognised self-regulating organisation,
 - (b) a recognised investment exchange, or
 - (c) a recognised clearing house,
- to the extent to which the decision relates to any of that body’s regulating provisions or specified practices.

Status: This is the original version (as it was originally enacted).

- (5) The Chapter I prohibition does not apply to the specified practices of—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
 - (b) a person who is subject to—
 - (i) the rules of one of those bodies, or
 - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order.
- (6) The Chapter I prohibition does not apply to any agreement the parties to which consist of or include—
- (a) a recognised self-regulating organisation, a recognised investment exchange or a recognised clearing house; or
 - (b) a person who is subject to—
 - (i) the rules of one of those bodies, or
 - (ii) the statements of principle, rules, regulations or codes of practice made by a designated agency in the exercise of functions transferred to it by a delegation order,
 to the extent to which the agreement consists of provisions the inclusion of which is required or contemplated by any of the body's regulating provisions or specified practices or by the statements of principle, rules, regulations or codes of practice of the agency.
- (7) The Chapter I prohibition does not apply to—
- (a) any clearing arrangements; or
 - (b) any agreement between a recognised investment exchange and a recognised clearing house, to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by any clearing arrangements.
- (8) If the recognition order in respect of a body of the kind mentioned in subsection (1)(a), (b) or (c) above is revoked, subsections (1) and (4) to (7) above are to have effect as if that body had continued to be recognised until the end of the period of six months beginning with the day on which the revocation took effect.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;
 - “regulating provisions” means—
 - (a) in relation to a self-regulating organisation, any rules made, or guidance issued, by the organisation;
 - (b) in relation to an investment exchange, any rules made, or guidance issued, by the exchange;
 - (c) in relation to a clearing house, any rules made, or guidance issued, by the clearing house;
 - “specified practices” means—
 - (a) in the case of a recognised self-regulating organisation, the practices mentioned in section 119(2)(a)(ii) and (iii) above (read with section 119(5) and (6)(a));

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- (b) in the case of a recognised investment exchange, the practices mentioned in section 119(2)(b)(ii) and (iii) above (read with section 119(5) and (6)(b));
- (c) in the case of a recognised clearing house, the practices mentioned in section 119(2)(c)(ii) and (iii) above (read with section 119(5) and (6)(b));
- (d) in the case of a person who is subject to the statements of principle, rules, regulations or codes of practice issued or made by a designated agency in the exercise of functions transferred to it by a delegation order, the practices mentioned in section 121(2)(c) above (read with section 121(4));

and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

- (3) Omit section 126 (certain practices not to constitute anti-competitive practices for the purposes of the Competition Act 1980).
- (4) For section 127 (modification of statutory provisions in relation to recognised professional bodies), substitute—

“127 Application of Competition Act 1998 in relation to recognised professional bodies: Chapter I prohibition

- (1) This section applies to—
 - (a) any agreement for the constitution of a recognised professional body to the extent to which it relates to the rules or guidance of that body relating to the carrying on of investment business by persons certified by it (“investment business rules”); and
 - (b) any other agreement, the parties to which consist of or include—
 - (i) a recognised professional body,
 - (ii) a person certified by such a body, or
 - (iii) a member of such a body,and which contains a provision required or contemplated by that body’s investment business rules.
- (2) If it appears to the Treasury, in relation to some or all of the provisions of an agreement to which this section applies—
 - (a) that the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
 - (b) that the effect of restricting, distorting or preventing competition which the provisions in question do have, or are intended or are likely to have, is not greater than is necessary for the protection of investors,the Treasury may make a declaration to that effect.
- (3) If the Treasury make a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.

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

- (4) If the Treasury are satisfied that there has been a material change of circumstances, they may—
- (a) revoke a declaration made under this section, if they consider that the grounds on which it was made no longer exist;
 - (b) vary such a declaration, if they consider that there are grounds for making a different declaration; or
 - (c) make a declaration even though they have notified the Director of their intention not to do so.
- (5) If the Treasury make, vary or revoke a declaration under this section they must notify the Director of their decision.
- (6) If the Director proposes to exercise any Chapter III powers in respect of any provisions of an agreement to which this section applies, he must—
- (a) notify the Treasury of his intention to do so; and
 - (b) give the Treasury particulars of the agreement and such other information—
 - (i) as he considers will assist the Treasury to decide whether to exercise their powers under this section; or
 - (ii) as the Treasury may request.
- (7) The Director may not exercise his Chapter III powers in respect of any provisions of an agreement to which this section applies, unless the Treasury—
- (a) have notified him that they have not made a declaration in respect of those provisions under this section and that they do not intend to make such a declaration; or
 - (b) have revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) A declaration under this section ceases to have effect if the agreement to which it relates ceases to be one to which this section applies.
- (9) In this section—
- “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
 - “Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition, and
- expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.
- (11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

PART II

COMPANIES

The Companies Act 1989 (c. 40)

- 2 (1) The Companies Act 1989 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the Restrictive Trade Practices Act 1976), substitute—

“The Competition Act 1998

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and
 - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
 - (b) any person mentioned in paragraph 3(5) or (6) above,
- to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
- (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
 - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
- and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

The Companies (Northern Ireland) Order 1990 (S.I. 1990/593 (N.I. 5))

- 3 (1) The Companies (Northern Ireland) Order 1990 is amended as follows.
- (2) In Schedule 14, for paragraph 9 (exclusion of certain agreements from the Restrictive Trade Practices Act 1976), substitute—

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

“The Competition Act 1998

- 9 (1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
- (a) rules of, or guidance issued by, the body; and
 - (b) incidental matters connected with the rules or guidance.
- (2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
- (a) a recognised supervisory or qualifying body, or
 - (b) any person mentioned in paragraph 3(5) or (6),
- to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.
- (3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b).
- (4) Where a recognition order is revoked, sub-paragraphs (1) to (3) are to continue to apply for a period of 6 months beginning with the day on which the revocation takes effect, as if the order were still in force.
- (5) In this paragraph—
- (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
 - (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
- and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.
- (6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

PART III

BROADCASTING

The Broadcasting Act 1990 (c. 42)

- 4 (1) The Broadcasting Act 1990 is amended as follows.
- (2) In section 194A (which modifies the Restrictive Trade Practices Act 1976 in its application to agreements relating to Channel 3 news provision), for subsections (2) to (6), substitute—
- “(2) If, having sought the advice of the Director, it appears to the Secretary of State, in relation to some or all of the provisions of a relevant agreement, that the conditions mentioned in subsection (3) are satisfied, he may make a declaration to that effect.

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

- (3) The conditions are that—
- (a) the provisions in question do not have, and are not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition; or
 - (b) the effect of restricting, distorting or preventing competition which the provisions in question do have or are intended or are likely to have, is not greater than is necessary—
 - (i) in the case of a relevant agreement falling within subsection (1)(a), for securing the appointment by holders of regional Channel 3 licences of a single body corporate to be the appointed news provider for the purposes of section 31(2), or
 - (ii) in the case of a relevant agreement falling within subsection (1)(b), for compliance by them with conditions included in their licences by virtue of section 31(1) and (2).
- (4) If the Secretary of State makes a declaration under this section, the Chapter I prohibition does not apply to the agreement to the extent to which the agreement consists of provisions to which the declaration relates.
- (5) If the Secretary of State is satisfied that there has been a material change of circumstances, he may—
- (a) revoke a declaration made under this section, if he considers that the grounds on which it was made no longer exist;
 - (b) vary such a declaration, if he considers that there are grounds for making a different declaration; or
 - (c) make a declaration, even though he has notified the Director of his intention not to do so.
- (6) If the Secretary of State makes, varies or revokes a declaration under this section, he must notify the Director of his decision.
- (7) The Director may not exercise any Chapter III powers in respect of a relevant agreement, unless—
- (a) he has notified the Secretary of State of his intention to do so; and
 - (b) the Secretary of State—
 - (i) has notified the Director that he has not made a declaration in respect of the agreement, or provisions of the agreement, under this section and that he does not intend to make such a declaration; or
 - (ii) has revoked a declaration under this section and a period of six months beginning with the date on which the revocation took effect has expired.
- (8) If the Director proposes to exercise any Chapter III powers in respect of a relevant agreement, he must give the Secretary of State particulars of the agreement and such other information—
- (a) as he considers will assist the Secretary of State to decide whether to exercise his powers under this section; or
 - (b) as the Secretary of State may request.
- (9) In this section—

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

“the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998;

“Chapter III powers” means the powers given to the Director by Chapter III of Part I of that Act so far as they relate to the Chapter I prohibition;

“Director” means the Director General of Fair Trading;

“regional Channel 3 licence” has the same meaning as in Part I; and expressions used in this section which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

(10) In this section references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice.

(11) In the application of this section to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.”

Networking arrangements under the Broadcasting Act 1990 (c. 42)

- 5 (1) The Chapter I prohibition does not apply in respect of any networking arrangements to the extent to which they—
- (a) are subject to Schedule 4 to the Broadcasting Act 1990 (competition references with respect to networking arrangements); or
 - (b) contain provisions which have been considered under that Schedule.
- (2) The Independent Television Commission (“ITC”) must publish a list of the networking arrangements which in their opinion are excluded from the Chapter I prohibition by virtue of sub-paragraph (1).
- (3) The ITC must—
- (a) consult the Director before publishing the list, and
 - (b) publish the list in such a way as they think most suitable for bringing it to the attention of persons who, in their opinion, would be affected by, or likely to have an interest in, it.
- (4) In this paragraph “networking arrangements” means—
- (a) any arrangements entered into as mentioned in section 39(4) or (7)(b) of the Broadcasting Act 1990, or
 - (b) any agreements—
 - (i) which do not constitute arrangements of the kind mentioned in paragraph (a), but
 - (ii) which are made for the purpose mentioned in section 39(1) of that Act, or
 - (c) any modification of the arrangements or agreements mentioned in paragraph (a) or (b).

PART IV

ENVIRONMENTAL PROTECTION

Producer responsibility obligations

- 6 (1) The Environment Act 1995 is amended as follows.
- (2) In section 94(1) (supplementary provisions about regulations imposing producer responsibility obligations on prescribed persons), after paragraph (o), insert—
- “(oa) the exclusion or modification of any provision of Part I of the Competition Act 1998 in relation to exemption schemes or in relation to any agreement, decision or concerted practice at least one of the parties to which is an operator of an exemption scheme;”.
- (3) After section 94(6), insert—
- “(6A) Expressions used in paragraph (oa) of subsection (1) above which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.”

- (4) After section 94, insert—

“94A Producer responsibility: competition matters

- (1) For the purposes of this section, the relevant paragraphs are paragraphs (n), (o), (oa) and (ya) of section 94(1) above.
- (2) Regulations made by virtue of any of the relevant paragraphs may include transitional provision in respect of agreements or exemption schemes—
- (a) in respect of which information has been required for the purposes of competition scrutiny under any regulation made by virtue of paragraph (ya);
- (b) which are being, or have been, considered for the purposes of competition scrutiny under any regulation made by virtue of paragraph (n) or (ya); or
- (c) in respect of which provisions of the Restrictive Trade Practices Acts 1976 and 1977 have been modified or excluded in accordance with any regulation made by virtue of paragraph (o).
- (3) Subsections (2), (3), (5) to (7) and (10) of section 93 above do not apply to a statutory instrument which contains only regulations made by virtue of any of the relevant paragraphs or subsection (2) above.
- (4) Such a statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.”