

SCHEDULES

SCHEDULE 7

Section 45(7).

THE COMPETITION COMMISSION

PART I

GENERAL

Interpretation

- 1 In this Schedule—
- “the 1973 Act” means the Fair Trading Act 1973;
 - “appeal panel member” means a member appointed under paragraph 2(1)(a);
 - “Chairman” means the chairman of the Commission;
 - “the Commission” means the Competition Commission;
 - “Council” has the meaning given in paragraph 5;
 - “general functions” means any functions of the Commission other than functions—
 - (a) in connection with appeals under this Act; or
 - (b) which are to be discharged by the Council;
 - “member” means a member of the Commission;
 - “newspaper merger reference” means a newspaper merger reference under section 59 of the 1973 Act;
 - “President” has the meaning given by paragraph 4(2);
 - “reporting panel member” means a member appointed under paragraph 2(1)(b);
 - “secretary” means the secretary of the Commission appointed under paragraph 9; and
 - “specialist panel member” means a member appointed under any of the provisions mentioned in paragraph 2(1)(d).

Membership of the Commission

- 2 (1) The Commission is to consist of—
- (a) members appointed by the Secretary of State to form a panel for the purposes of the Commission’s functions in relation to appeals;
 - (b) members appointed by the Secretary of State to form a panel for the purposes of the Commission’s general functions;
 - (c) members appointed (in accordance with paragraph 15(5)) from the panel maintained under paragraph 22;
 - (d) members appointed by the Secretary of State under or by virtue of—

Status: This is the original version (as it was originally enacted).

- (i) section 12(4) or 14(8) of the Water Industry Act 1991;
 - (ii) section 12(9) of the Electricity Act 1989;
 - (iii) section 13(10) of the Telecommunications Act 1984;
 - (iv) Article 15(9) of the Electricity (Northern Ireland) Order 1992.
- (2) A person who is appointed as a member of a kind mentioned in one of paragraphs (a) to (c) of sub-paragraph (3) may also be appointed as a member of either or both of the other kinds mentioned in those paragraphs.
- (3) The kinds of member are—
- (a) an appeal panel member;
 - (b) a reporting panel member;
 - (c) a specialist panel member.
- (4) Before appointing a person who is qualified for appointment to the panel of chairmen (see paragraph 26(2)), the Secretary of State must consult the Lord Chancellor or Lord Advocate, as he considers appropriate.
- (5) The validity of the Commission’s proceedings is not affected by a defect in the appointment of a member.

Chairman and deputy chairmen

- 3
- (1) The Commission is to have a chairman appointed by the Secretary of State from among the reporting panel members.
 - (2) The Secretary of State may appoint one or more of the reporting panel members to act as deputy chairman.
 - (3) The Chairman, and any deputy chairman, may resign that office at any time by notice in writing addressed to the Secretary of State.
 - (4) If the Chairman (or a deputy chairman) ceases to be a member he also ceases to be Chairman (or a deputy chairman).
 - (5) If the Chairman is absent or otherwise unable to act, or there is no chairman, any of his functions may be performed—
 - (a) if there is one deputy chairman, by him;
 - (b) if there is more than one—
 - (i) by the deputy chairman designated by the Secretary of State; or
 - (ii) if no such designation has been made, by the deputy chairman designated by the deputy chairmen;
 - (c) if there is no deputy chairman able to act—
 - (i) by the member designated by the Secretary of State; or
 - (ii) if no such designation has been made, by the member designated by the Commission.

President

- 4
- (1) The Secretary of State must appoint one of the appeal panel members to preside over the discharge of the Commission’s functions in relation to appeals.

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

- (2) The member so appointed is to be known as the President of the Competition Commission Appeal Tribunals (but is referred to in this Schedule as “the President”).
- (3) The Secretary of State may not appoint a person to be the President unless that person—
 - (a) has a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
 - (b) is an advocate or solicitor in Scotland of at least ten years' standing, or
 - (c) is—
 - (i) a member of the Bar of Northern Ireland of at least ten years' standing, or
 - (ii) a solicitor of the Supreme Court of Northern Ireland of at least ten years' standing,and appears to the Secretary of State to have appropriate experience and knowledge of competition law and practice.
- (4) Before appointing the President, the Secretary of State must consult the Lord Chancellor or Lord Advocate, as he considers appropriate.
- (5) If the President ceases to be a member he also ceases to be President.

The Council

- 5 (1) The Commission is to have a management board to be known as the Competition Commission Council (but referred to in this Schedule as “the Council”).
- (2) The Council is to consist of—
 - (a) the Chairman;
 - (b) the President;
 - (c) such other members as the Secretary of State may appoint; and
 - (d) the secretary.
- (3) In exercising its functions under paragraphs 3 and 7 to 12 and paragraph 5 of Schedule 8, the Commission is to act through the Council.
- (4) The Council may determine its own procedure including, in particular, its quorum.
- (5) The Chairman (and any person acting as Chairman) is to have a casting vote on any question being decided by the Council.

Term of office

- 6 (1) Subject to the provisions of this Schedule, each member is to hold and vacate office in accordance with the terms of his appointment.
- (2) A person is not to be appointed as a member for more than five years at a time.
- (3) Any member may at any time resign by notice in writing addressed to the Secretary of State.
- (4) The Secretary of State may remove a member on the ground of incapacity or misbehaviour.

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

- (5) No person is to be prevented from being appointed as a member merely because he has previously been a member.

Expenses, remuneration and pensions

- 7 (1) The Secretary of State shall pay to the Commission such sums as he considers appropriate to enable it to perform its functions.
- (2) The Commission may pay, or make provision for paying, to or in respect of each member such salaries or other remuneration and such pensions, allowances, fees, expenses or gratuities as the Secretary of State may determine.
- (3) If a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation, the Commission may make a payment to him of such amount as the Secretary of State may determine.
- (4) The approval of the Treasury is required for—
- (a) any payment under sub-paragraph (1);
 - (b) any determination of the Secretary of State under sub-paragraph (2) or (3).

The Commission's powers

- 8 Subject to the provisions of this Schedule, the Commission has power to do anything (except borrow money)—
- (a) calculated to facilitate the discharge of its functions; or
 - (b) incidental or conducive to the discharge of its functions.

Staff

- 9 (1) The Commission is to have a secretary, appointed by the Secretary of State on such terms and conditions of service as he considers appropriate.
- (2) The approval of the Treasury is required as to those terms and conditions.
- (3) Before appointing a person to be secretary, the Secretary of State must consult the Chairman and the President.
- (4) Subject to obtaining the approval of—
- (a) the Secretary of State, as to numbers, and
 - (b) the Secretary of State and Treasury, as to terms and conditions of service,
- the Commission may appoint such staff as it thinks appropriate.

Procedure

- 10 Subject to any provision made by or under this Act, the Commission may regulate its own procedure.

Application of seal and proof of instruments

- 11 (1) The application of the seal of the Commission must be authenticated by the signature of the secretary or of some other person authorised for the purpose.

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

- (2) Sub-paragraph (1) does not apply in relation to any document which is or is to be signed in accordance with the law of Scotland.
- (3) A document purporting to be duly executed under the seal of the Commission—
 - (a) is to be received in evidence; and
 - (b) is to be taken to have been so executed unless the contrary is proved.

Accounts

- 12 (1) The Commission must—
- (a) keep proper accounts and proper records in relation to its accounts;
 - (b) prepare a statement of accounts in respect of each of its financial years; and
 - (c) send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates.
- (2) The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury as to—
- (a) the information to be contained in it,
 - (b) the manner in which the information contained in it is to be presented, or
 - (c) the methods and principles according to which the statement is to be prepared,
- and must contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for informing Parliament.
- (3) The Comptroller and Auditor General must—
- (a) examine, certify and report on each statement received by him as a result of this paragraph; and
 - (b) lay copies of each statement and of his report before each House of Parliament.
- (4) In this paragraph “financial year” means the period beginning with the date on which the Commission is established and ending with March 31st next, and each successive period of twelve months.

Status

- 13 (1) The Commission is not to be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.
- (2) The Commission’s property is not to be regarded as property of, or held on behalf of, the Crown.

PART II

PERFORMANCE OF THE COMMISSION’S GENERAL FUNCTIONS

Interpretation

- 14 In this Part of this Schedule “group” means a group selected under paragraph 15.

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

Discharge of certain functions by groups

- 15 (1) Except where sub-paragraph (7) gives the Chairman power to act on his own, any general function of the Commission must be performed through a group selected for the purpose by the Chairman.
- (2) The group must consist of at least three persons one of whom may be the Chairman.
- (3) In selecting the members of the group, the Chairman must comply with any requirement as to its constitution imposed by any enactment applying to specialist panel members.
- (4) If the functions to be performed through the group relate to a newspaper merger reference, the group must, subject to sub-paragraph (5), consist of such reporting panel members as the Chairman may select.
- (5) The Secretary of State may appoint one, two or three persons from the panel maintained under paragraph 22 to be members and, if he does so, the group—
- (a) must include that member or those members; and
 - (b) if there are three such members, may (if the Chairman so decides) consist entirely of those members.
- (6) Subject to sub-paragraphs (2) to (5), a group must consist of reporting panel members or specialist panel members selected by the Chairman.
- (7) While a group is being constituted to perform a particular general function of the Commission, the Chairman may—
- (a) take such steps (falling within that general function) as he considers appropriate to facilitate the work of the group when it has been constituted; or
 - (b) exercise the power conferred by section 75(5) of the 1973 Act (setting aside references).

Chairmen of groups

- 16 The Chairman must appoint one of the members of a group to act as the chairman of the group.

Replacement of member of group

- 17 (1) If, during the proceedings of a group—
- (a) a member of the group ceases to be a member of the Commission,
 - (b) the Chairman is satisfied that a member of the group will be unable for a substantial period to perform his duties as a member of the group, or
 - (c) it appears to the Chairman that because of a particular interest of a member of the group it is inappropriate for him to remain in the group,
- the Chairman may appoint a replacement.
- (2) The Chairman may also at any time appoint any reporting panel member to be an additional member of a group.

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

Attendance of other members

- 18 (1) At the invitation of the chairman of a group, any reporting panel member who is not a member of the group may attend meetings or otherwise take part in the proceedings of the group.
- (2) But any person attending in response to such an invitation may not—
- (a) vote in any proceedings of the group; or
 - (b) have a statement of his dissent from a conclusion of the group included in a report made by them.
- (3) Nothing in sub-paragraph (1) is to be taken to prevent a group, or a member of a group, from consulting any member of the Commission with respect to any matter or question with which the group is concerned.

Procedure

- 19 (1) Subject to any special or general directions given by the Secretary of State, each group may determine its own procedure.
- (2) Each group may, in particular, determine its quorum and determine—
- (a) the extent, if any, to which persons interested or claiming to be interested in the subject-matter of the reference are allowed—
 - (i) to be present or to be heard, either by themselves or by their representatives;
 - (ii) to cross-examine witnesses; or
 - (iii) otherwise to take part; and
 - (b) the extent, if any, to which sittings of the group are to be held in public.
- (3) In determining its procedure a group must have regard to any guidance issued by the Chairman.
- (4) Before issuing any guidance for the purposes of this paragraph the Chairman must consult the members of the Commission.

Effect of exercise of functions by group

- 20 (1) Subject to sub-paragraph (2), anything done by or in relation to a group in, or in connection with, the performance of functions to be performed by the group is to have the same effect as if done by or in relation to the Commission.
- (2) For the purposes of—
- (a) sections 56 and 73 of the 1973 Act,
 - (b) section 19A of the Agricultural Marketing Act 1958,
 - (c) Articles 23 and 42 of the Agricultural Marketing (Northern Ireland) Order 1982,
- a conclusion contained in a report of a group is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group.

Casting votes

- 21 The chairman of a group is to have a casting vote on any question to be decided by the group.

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

Newspaper merger references

- 22 The Secretary of State must maintain a panel of persons whom he regards as suitable for selection as members of a group constituted in connection with a newspaper merger reference.

PART III

APPEALS

Interpretation

- 23 In this Part of this Schedule—
“panel of chairmen” means the panel appointed under paragraph 26; and
“tribunal” means an appeal tribunal constituted in accordance with paragraph 27.

Training of appeal panel members

- 24 The President must arrange such training for appeal panel members as he considers appropriate.

Acting President

- 25 If the President is absent or otherwise unable to act, the Secretary of State may appoint as acting president an appeal panel member who is qualified to act as chairman of a tribunal.

Panel of tribunal chairmen

- 26 (1) There is to be a panel of appeal panel members appointed by the Secretary of State for the purposes of providing chairmen of appeal tribunals established under this Part of this Schedule.
- (2) A person is qualified for appointment to the panel of chairmen only if—
- (a) he has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990,
 - (b) he is an advocate or solicitor in Scotland of at least seven years' standing, or
 - (c) he is—
 - (i) a member of the Bar of Northern Ireland of at least seven years' standing, or
 - (ii) a solicitor of the Supreme Court of Northern Ireland of at least seven years' standing,
and appears to the Secretary of State to have appropriate experience and knowledge of competition law and practice.

Constitution of tribunals

- 27 (1) On receipt of a notice of appeal, the President must constitute an appeal tribunal to deal with the appeal.
- (2) An appeal tribunal is to consist of—

- (a) a chairman, who must be either the President or a person appointed by him to be chairman from the panel of chairmen; and
- (b) two other appeal panel members appointed by the President.

PART IV

MISCELLANEOUS

Disqualification of members for House of Commons

- 28 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—

“The Competition Commission”.

Disqualification of members for Northern Ireland Assembly

- 29 In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) insert at the appropriate place—

“The Competition Commission”.

PART V

TRANSITIONAL PROVISIONS

Interpretation

- 30 In this Part of this Schedule—
“commencement date” means the date on which section 45 comes into force; and
“MMC” means the Monopolies and Mergers Commission.

Chairman

- 31 (1) The person who is Chairman of the MMC immediately before the commencement date is on that date to become both a member of the Commission and its chairman as if he had been duly appointed under paragraphs 2(1)(b) and 3.
(2) He is to hold office as Chairman of the Commission for the remainder of the period for which he was appointed as Chairman of the MMC and on the terms on which he was so appointed.

Deputy chairmen

- 32 The persons who are deputy chairmen of the MMC immediately before the commencement date are on that date to become deputy chairmen of the Commission as if they had been duly appointed under paragraph 3(2).

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

Reporting panel members

- 33 (1) The persons who are members of the MMC immediately before the commencement date are on that date to become members of the Commission as if they had been duly appointed under paragraph 2(1)(b).
- (2) Each of them is to hold office as a member for the remainder of the period for which he was appointed as a member of the MMC and on the terms on which he was so appointed.

Specialist panel members

- 34 (1) The persons who are members of the MMC immediately before the commencement date by virtue of appointments made under any of the enactments mentioned in paragraph 2(1)(d) are on that date to become members of the Commission as if they had been duly appointed to the Commission under the enactment in question.
- (2) Each of them is to hold office as a member for such period and on such terms as the Secretary of State may determine.

Secretary

- 35 The person who is the secretary of the MMC immediately before the commencement date is on that date to become the secretary of the Commission as if duly appointed under paragraph 9, on the same terms and conditions.

Council

- 36 (1) The members who become deputy chairmen of the Commission under paragraph 32 are also to become members of the Council as if they had been duly appointed under paragraph 5(2)(c).
- (2) Each of them is to hold office as a member of the Council for such period as the Secretary of State determines.