

## SCHEDULES

### SCHEDULE 7

#### ENFORCEMENT REGIME FOR PUBLIC INTEREST AND SPECIAL PUBLIC INTEREST CASES

##### *Undertakings in lieu of reference under section 45 or 62*

- 3 (1) Sub-paragraph (2) applies if the Secretary of State has power to make a reference to the Commission under section 45 or 62 and otherwise intends to make such a reference.
- (2) The Secretary of State may, instead of making such a reference and for the purpose of remedying, mitigating or preventing any of the effects adverse to the public interest which have or may have resulted, or which may be expected to result, from the creation of the relevant merger situation concerned or (as the case may be) the special merger situation concerned, accept from such of the parties concerned as he considers appropriate undertakings to take such action as he considers appropriate.
- (3) In proceeding under sub-paragraph (2), the Secretary of State shall, in particular—
- (a) accept the decisions of the OFT included in its report under section 44 so far as they relate to the matters mentioned in subsections (4) and (5) of that section; or
  - (b) (as the case may be) accept the decisions of the OFT included in its report under section 61 so far as they relate to the matters mentioned in subsections (3)(a) and (4) of that section.
- (4) In proceeding under sub-paragraph (2) in relation to an anti-competitive outcome, the Secretary of State may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the creation of the relevant merger situation concerned.
- (5) No undertaking shall be accepted by the Secretary of State under this paragraph in connection with a possible reference under section 45 if a public interest consideration mentioned in the intervention notice concerned has not been finalised and the period of 24 weeks beginning with the giving of that notice has not expired.
- (6) The Secretary of State may delay making a decision as to whether to accept any such undertaking (and any related decision as to whether to make a reference under section 45) if he considers that there is a realistic prospect of the public interest consideration being finalised within the period of 24 weeks beginning with the giving of the intervention notice concerned.
- (7) A delay under sub-paragraph (6) shall not extend beyond—
- (a) the time when the public interest consideration is finalised; or
  - (b) if earlier, the expiry of the period of 24 weeks mentioned in that sub-paragraph.
- (8) An undertaking under this paragraph—

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- (a) shall come into force when accepted;
  - (b) may be varied or superseded by another undertaking; or
  - (c) may be released by the Secretary of State.
- (9) An undertaking under this paragraph which is in force in relation to a relevant merger situation or (as the case may be) a special merger situation shall cease to be in force if an order comes into force under paragraph 5 or 6 in relation to that undertaking.
- (10) The Secretary of State shall, as soon as reasonably practicable, consider any representations received by him in relation to varying or releasing an undertaking under this section.