

SCHEDULES

SCHEDULE 7

ENFORCEMENT REGIME FOR PUBLIC INTEREST AND SPECIAL PUBLIC INTEREST CASES

Statutory restrictions following reference under section 45 or 62

- 7 (1) Sub-paragraphs (2) and (3) apply where—
- (a) a reference has been made under section 45(2) or (3) or 62(2) but not finally determined; and
 - (b) no undertakings under paragraph 1 are in force in relation to the relevant merger situation concerned or (as the case may be) the special merger situation concerned and no orders under paragraph 2 are in force in relation to that situation.
- (2) No relevant person shall, without the consent of the Secretary of State—
- (a) complete any outstanding matters in connection with any arrangements which have resulted in the enterprises concerned ceasing to be distinct enterprises;
 - (b) make any further arrangements in consequence of that result (other than arrangements which reverse that result); or
 - (c) transfer the ownership or control of any enterprises to which the reference relates.
- (3) No relevant person shall, without the consent of the Secretary of State, assist in any of the activities mentioned in paragraphs (a) to (c) of sub-paragraph (2).
- (4) The prohibitions in sub-paragraphs (2) and (3) do not apply in relation to anything which the person concerned is required to do by virtue of any enactment.
- (5) The consent of the Secretary of State under sub-paragraph (2) or (3)—
- (a) may be general or specific;
 - (b) may be revoked by the Secretary of State; and
 - (c) shall be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of any person entitled to the benefit of it.
- (6) Paragraph (c) of sub-paragraph (5) shall not apply if the Secretary of State considers that publication is not necessary for the purpose mentioned in that paragraph.
- (7) Sub-paragraphs (2) and (3) shall apply to a person's conduct outside the United Kingdom if (and only if) he is—
- (a) a United Kingdom national;
 - (b) a body incorporated under the law of the United Kingdom or of any part of the United Kingdom; or
 - (c) a person carrying on business in the United Kingdom.

Status: This is the original version (as it was originally enacted).

- (8) For the purpose of this paragraph a reference under section 45(2) or (3) is finally determined if—
- (a) the time within which the Commission is to prepare a report under section 50 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
 - (b) the Commission decides to cancel the reference under section 53(1);
 - (c) the time within which the Secretary of State is to make and publish a decision under section 54(2) has expired and no such decision has been made and published;
 - (d) the Secretary of State decides under section 54(2) to make no finding at all in the matter;
 - (e) the Secretary of State otherwise decides under section 54(2) not to make an adverse public interest finding;
 - (f) the Secretary of State decides under section 54(2) to make an adverse public interest finding but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
 - (g) the Secretary of State decides under section 54(2) to make an adverse public interest finding and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (9) For the purpose of this paragraph a reference under section 62(2) is finally determined if—
- (a) the time within which the Commission is to prepare a report under section 65 in relation to the reference and give it to the Secretary of State has expired and no such report has been so prepared and given;
 - (b) the time within which the Secretary of State is to make and publish a decision under section 66(2) has expired and no such decision has been made and published;
 - (c) the Secretary of State decides under subsection (2) of section 66 otherwise than as mentioned in subsection (5) of that section;
 - (d) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section but decides neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; or
 - (e) the Secretary of State decides under subsection (2) of section 66 as mentioned in subsection (5) of that section and accepts an undertaking under paragraph 9 of this Schedule or makes an order under paragraph 11 of this Schedule.
- (10) For the purposes of this paragraph the time when a reference under section 45(2) or (3) or (as the case may be) 62(2) is finally determined is—
- (a) in a case falling within sub-paragraph (8)(a) or (c) or (as the case may be) (9)(a) or (b), the expiry of the time concerned;
 - (b) in a case falling within sub-paragraph (8)(b), (d) or (e) or (as the case may be) (9)(c), the making of the decision concerned;
 - (c) in a case falling within sub-paragraph (8)(f) or (as the case may be) (9)(d), the making of the decision neither to accept an undertaking under paragraph 9 of this Schedule nor to make an order under paragraph 11 of this Schedule; and

- (d) in a case falling within sub-paragraph (8)(g) or (as the case may be) (9)(e), the acceptance of the undertaking concerned or (as the case may be) the making of the order concerned.
- (11) In this paragraph “relevant person” means—
- (a) any person who carries on any enterprise to which the reference relates or who has control of any such enterprise;
 - (b) any subsidiary of any person falling within paragraph (a); or
 - (c) any person associated with any person falling within paragraph (a) or any subsidiary of any person so associated.