



# Enterprise and Regulatory Reform Act 2013

## 2013 CHAPTER 24

### PART 4

#### COMPETITION REFORM

### CHAPTER 5

#### MISCELLANEOUS

#### *Enforcement orders: markets and mergers*

#### **49 Enforcement orders: monitoring compliance and determination of disputes**

In Schedule 8 to the 2002 Act (provision that may be contained in certain enforcement orders made under Part 3 or 4 of that Act), after paragraph 20B insert—

#### *“Monitoring of compliance and determination of disputes*

- 20C (1) An order may provide for the appointment of one or more than one person (referred to in this paragraph as an “appointee”) by the relevant authority or by such other persons as may be specified or described in the order to—
- (a) monitor compliance with such terms of the order as are so specified or described or terms of any directions given under the order;
  - (b) determine any dispute between persons who are subject to the order about what is required by any such terms.
- (2) An order made by virtue of this paragraph must make provision as to the terms of an appointee’s appointment.

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- (3) A determination made by virtue of an order under this paragraph is binding on—
- (a) any person who is subject to the order;
  - (b) the relevant authority; and
  - (c) in the case where the relevant authority is the Secretary of State, the CMA.”

## **50 Enforcement orders: provision of information**

- (1) Schedule 8 to the 2002 Act (provision that may be contained in certain enforcement orders made under Part 3 or 4 of that Act) is amended as follows.
- (2) Omit paragraph 15 (publication etc. of price information).
- (3) Paragraph 17 (publication etc. of other information) is amended as follows.
- (4) In sub-paragraph (1)—
  - (a) in the words before paragraph (a), after “publish” insert “or otherwise notify”, and
  - (b) after paragraph (c) insert—
    - “(d) information in relation to prices of the goods or services supplied;
    - (e) such other information in relation to the goods or services supplied as the relevant authority considers appropriate.”
- (5) After sub-paragraph (1) insert—
 

“(1A) An order may prohibit the publication or other notification of information falling within sub-paragraph (1)(a) to (e) by a person supplying goods or services.”
- (6) In paragraph 18 (supplementary provision about orders under paragraphs 15 and 17), omit “15 or”.

### *Concurrency*

## **51 Powers of sectoral regulators**

- (1) Section 54 of the 1998 Act (concurrent powers for regulators) is amended as follows.
- (2) In subsection (6)—
  - (a) after “may” insert “—
    - (a) prescribe circumstances in which the CMA may decide that, in a particular case, it is to exercise Part 1 functions in respect of the case rather than a regulator;
    - (b)”,
 and
  - (b) after “Secretary of State” insert “, the CMA”.
- (3) After subsection (6) insert—

“(6A) Where the regulations make provision as mentioned in subsection (6)(a), they must—

- (a) include provision requiring the CMA to consult the regulator concerned before making a decision that the CMA is to exercise Part 1 functions in respect of a particular case, and
- (b) provide that, in a case where a regulator has given notice under section 31(1) that it proposes to make a decision (within the meaning given by section 31(2)), the CMA may only decide that it is to exercise Part 1 functions in respect of the case rather than the regulator if the regulator consents.”

(4) After subsection (6A) insert—

“(6B) The Secretary of State may by regulations make provision requiring arrangements to be made for the sharing of information between competent persons in connection with concurrent cases.

(6C) For the purposes of subsection (6B), “a concurrent case” is a case in respect of which—

- (a) the CMA considers that Part 1 functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by both it and any regulator;
- (b) any regulator considers that Part 1 functions are, or (but for provision made under subsection (5)(e)) would be, exercisable by it.”

(5) Schedule 14 (which makes provision governing the relationship between the powers of regulators under the 1998 Act and those under sector-specific legislation) has effect.

## **52 Power to remove concurrent competition functions of sectoral regulators**

(1) The Secretary of State may make a sectoral regulator order if the Secretary of State considers that it is appropriate to do so for the purpose of promoting competition, within any market or markets in the United Kingdom, for the benefit of consumers.

(2) A sectoral regulator order is an order that amends one or more enactments so as to remove from a sectoral regulator either or both of the following—

- (a) all the functions of the regulator under Part 1 of the 1998 Act that are exercisable concurrently by the regulator and the Competition and Markets Authority (“the CMA”) or that would be so exercisable but for provision made by virtue of section 54(5)(e) of that Act;
- (b) all the functions of the regulator under Part 4 of the 2002 Act that are exercisable concurrently by the regulator and the CMA.

(3) A sectoral regulator order may make such other amendments of any enactment as the Secretary of State considers appropriate in consequence of the removal of the functions.

(4) Each of the following is a sectoral regulator—

- (a) the Office of Communications;
- (b) the Gas and Electricity Markets Authority;
- (c) the Water Services Regulation Authority;
- (d) the Office of Rail Regulation;

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- (e) the Northern Ireland Authority for Utility Regulation;
  - (f) the Civil Aviation Authority.
- (5) A sectoral regulator order may include transitional, transitory or saving provision.
- (6) A statutory instrument containing a sectoral regulator order is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section—
- “amend” includes repeal or revoke;
  - “enactment” includes—
- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
  - (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation.
- (8) The references to the CMA in subsection (2) are to be read, in relation to any time before the commencement of section 25(3), as references to the Office of Fair Trading.

### **53 Orders under section 52: procedural requirements**

- (1) If the Secretary of State proposes to make a sectoral regulator order, the Secretary of State must carry out the first stage consultation.
- (2) The first stage consultation is consultation with—
- (a) the regulator whose functions would be removed by the order,
  - (b) the Competition and Markets Authority,
  - (c) where the regulator is the Office of Rail Regulation, the Scottish Ministers,
  - (d) where the regulator is the Northern Ireland Authority for Utility Regulation, the Department of Enterprise, Trade and Investment in Northern Ireland and the Department for Regional Development in Northern Ireland, and
  - (e) where the regulator is the Water Services Regulation Authority, the Welsh Ministers.
- (3) If (following the first stage consultation) the Secretary of State still proposes to make a sectoral regulator order, the Secretary of State must carry out the second stage consultation.
- (4) The second stage consultation is consultation with—
- (a) the persons consulted at the first stage,
  - (b) any bodies who appear to the Secretary of State to represent the interests of persons in respect of whom the functions that would be removed by the order are exercisable (“regulated providers”),
  - (c) any bodies who appear to the Secretary of State to represent the interests of persons who use the services supplied by regulated providers, and
  - (d) such other persons as the Secretary of State considers appropriate.

- (5) The Secretary of State must give the following information to each of the persons consulted as part of the first stage or second stage consultation—
  - (a) an explanation as to whether the Secretary of State is proposing to remove the functions of the regulator mentioned in subsection (2)(a) of section 52, the functions of the regulator mentioned in subsection (2)(b) of that section or both sets of functions;
  - (b) the reasons why the Secretary of State considers it appropriate to make the order.
- (6) The reference to the Competition and Markets Authority in subsection (2) is to be read, in relation to any time before the commencement of section 25(3), as a reference to the Office of Fair Trading.
- (7) In this section, “sectoral regulator order” has the same meaning as in section 52.

### *Miscellaneous*

#### **54 Recovery of CMA’s costs in respect of price control references**

After section 193 of the Communications Act 2003 (reference of price control matters) insert—

##### **“193A Recovery of CMA’s costs in respect of price control references**

- (1) Where a determination is made on a price control matter referred by virtue of section 193, the CMA may make an order in respect of the costs incurred by it in connection with the reference (a “costs order”).
- (2) A costs order may require the payment to the CMA of some or all of those costs by such parties to the appeal which gave rise to the reference, other than OFCOM, as the CMA considers appropriate.
- (3) A costs order must—
  - (a) set out the total costs incurred by the CMA in connection with the reference, and
  - (b) specify the proportion of those costs to be paid by each party to the appeal in respect of whom the order is made.
- (4) In deciding on the proportion of costs to be paid by a party to the appeal the CMA must, in particular, consider—
  - (a) the extent to which the determination on the reference upholds OFCOM’s decision in relation to the price control matter in question,
  - (b) the extent to which the costs were attributable to the involvement in the appeal of the party, and
  - (c) the conduct of the party.
- (5) A costs order—
  - (a) must be made as soon as reasonably practicable after the making of the determination on the reference, but
  - (b) does not take effect unless the Tribunal, in deciding the appeal which gave rise to the reference, decides the price control matter which is the

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subject of the reference in accordance with the determination of the CMA (see section 193(6)).

- (6) In a case where the Tribunal decides the price control matter in question otherwise than as mentioned in subsection (5)(b), the CMA may make an order under this subsection in respect of the costs incurred by it in connection with the reference.
- (7) Subsections (2) to (4) apply in relation to an order under subsection (6) as they apply in relation to an order under subsection (1); but for that purpose the reference in subsection (4)(a) to the determination on the reference is to be read as a reference to the decision of the Tribunal mentioned in subsection (6).
- (8) An order under subsection (6) must be made as soon as reasonably practicable after the decision of the Tribunal mentioned in that subsection.
- (9) An amount payable to the CMA by virtue of an order made under this section is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (10) The CMA must pay any sums it receives by virtue of this section into the Consolidated Fund.
- (11) The functions of the CMA under this section, other than those under subsections (9) and (10), are to be carried out on behalf of the CMA by the group constituted by the chair of the CMA in relation to the reference in question.”

## **55 Disclosure etc. of information: offences**

In section 241 of the 2002 Act (disclosure of information for the purpose of exercise of statutory functions), after subsection (2) insert—

“(2A) Information disclosed under subsection (1) so that it is not made available to the public must not be used by the person to whom it is disclosed for any purpose other than that mentioned in subsection (1).”

## **56 Review of certain provisions of Chapters 1 and 2**

- (1) The Secretary of State must, before the end of each review period—
  - (a) carry out a review of the provisions of this Part mentioned in subsection (2), and
  - (b) prepare and publish a report setting out the conclusions of the review.
- (2) The provisions of this Part are—
  - (a) sections 29 and 36 and Schedule 11 (investigation powers: mergers and markets),
  - (b) section 30 and Schedule 7 (interim measures and pre-emptive action: mergers), and
  - (c) sections 32 and 38 and Schedules 8 and 12 (time-limits etc: mergers and markets).
- (3) The report must in particular—
  - (a) set out the objectives intended to be achieved by the provisions,
  - (b) assess the extent to which those objectives have been achieved, and

- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way which imposed less regulation.
- (4) The Secretary of State must lay the report before Parliament.
- (5) Each of the following is a review period for the purposes of this section—
  - (a) the period of 5 years beginning with the first day on which any of the provisions mentioned in subsection (2) comes into force (whether wholly or partly), and
  - (b) each successive period of 5 years.

## **57 Minor and consequential amendments**

Schedule 15 (which makes minor and consequential amendments related to this Part) has effect.

## **58 Interpretation**

In this Part—

“the 1998 Act” means the Competition Act 1998;

“the 2002 Act” means the Enterprise Act 2002.