

SCHEDULES

SCHEDULE 4

THE COMPETITION AND MARKETS AUTHORITY

PART 3

THE CMA PANEL

The CMA panel

- 34 The CMA panel is a panel of persons available for selection as members of a group constituted in accordance with this Part of this Schedule.

Membership of CMA panel

- 35 (1) The CMA panel is to consist of—
- (a) at least one person (a “newspaper panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of a group constituted to carry out functions on behalf of the CMA with respect to a newspaper merger reference (a “newspaper merger reference group”);
 - (b) at least three persons (“specialist communications panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out functions on behalf of the CMA with respect to a specialist communications reference (a “specialist communications reference group”);
 - (c) at least six persons (“specialist utility panel members”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out specialist utility functions on behalf of the CMA (a “specialist utility group”);
 - (d) at least one person (a “reporting panel member”) appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as a member of any group constituted to carry out functions on behalf of the CMA;
 - (e) any persons who are appointed to the CMA panel under paragraph 1(1)(b) for the purpose of being available for selection as members of a group constituted to carry out functions with respect to a reference under article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1)).
- (2) A person who is appointed to the CMA panel as a member of a kind mentioned in one of paragraphs (a) to (e) of sub-paragraph (1) may also be appointed as a member of one or more of the other kinds mentioned in those paragraphs.
- (3) For the purposes of this paragraph and paragraph 38—

Status: This is the original version (as it was originally enacted).

- a “newspaper merger reference” is—
- (a) a reference under section 45 of the Enterprise Act 2002 that specifies a newspaper public interest consideration (within the meaning of paragraph 20A of Schedule 8 to that Act);
 - (b) a reference under section 62 of that Act that specifies a consideration specified in section 58(2A) or (2B) of that Act;
- a “specialist communications reference” is a reference under section 193 of the Communications Act 2003;
- “specialist utility functions” are functions with respect to—
- (a) an appeal under section 23B, or a reference under section 41E, of the Gas Act 1986;
 - (b) an appeal under section 11C, or a reference under section 56C, of the Electricity Act 1989;
 - (c) a reference under section 12, 14 or 17K of the Water Industry Act 1991;
 - (d) the giving of a direction or the making of modifications under section 16A or 17P of that Act;
 - (e) an appeal under section 173 of the Energy Act 2004;
 - (f) a reference under article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 ([SI 2005/3172](#));
 - (g) the giving of a direction or the making of modifications under article 9 of that Order.

Constitution of CMA groups

- 36 Where the chair is, by or under any enactment, required to constitute a group under this Schedule (a “CMA group”), the chair must constitute the group in accordance with this Part of this Schedule.

Membership of CMA groups

- 37 (1) The members of a CMA group are to be selected by the chair.
- (2) In selecting the members of a CMA group, the chair must comply with any requirements imposed by or under any enactment.
- (3) Subject to that, paragraph 38 has effect for the purposes of the membership of a CMA group.
- 38 (1) Each CMA group is to consist of at least three members of the CMA panel.
- (2) Subject to sub-paragraphs (3) to (6), those members are to be such persons as the chair may select.
- (3) In the case of a newspaper merger reference group—
- (a) the group must include at least one newspaper panel member;
 - (b) the members of the group (if any) who are not newspaper panel members must be reporting panel members.
- (4) In the case of a specialist communications reference group, the group must include at least one, but not more than three, of the specialist communications panel members.

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

- (5) In the case of a specialist utility group, the group must include at least one of the specialist utility panel members.
 - (6) A newspaper panel member is not to be selected as a member of a CMA group that is not a newspaper merger reference group.
 - (7) The chair may at any time appoint a reporting panel member to be an additional member of a CMA group.
 - (8) The chair must appoint one of the members of a CMA group to chair the group (the “group chair”).
- 39 The validity of anything done by a CMA group is not affected by—
- (a) a vacancy;
 - (b) a defective appointment.

Termination of person’s membership of a CMA group

- 40 A member of the CMA panel may at any time resign from a CMA group by giving written notice to this effect to the chair.
- 41 (1) Sub-paragraph (2) applies if the chair considers that—
- (a) a member of a CMA group will be unable, for a substantial period, to perform his or her duties as a member of the group, or
 - (b) because of a particular interest of a member of a CMA group, it is inappropriate for him or her to remain a member of the group.
- (2) The chair may remove the person in question from membership of the group.
- 42 A person ceases to be a member of a CMA group on ceasing to be a member of the CMA panel.

Replacement of a member of a CMA group

- 43 (1) Sub-paragraph (2) applies if a person ceases to be a member of a CMA group, whether by being removed under paragraph 41, or otherwise.
- (2) The chair may select a replacement member of the group from the CMA panel.

Continuity on removal or replacement

- 44 (1) A person’s ceasing to be a member of a CMA group, whether by being removed under paragraph 41, or otherwise, does not prevent—
- (a) the group from continuing with anything begun before the person ceased to be a member of it;
 - (b) any decision made or direction given by the person while a member of the group from having effect after he or she has ceased to be a member of the group.
- (2) Sub-paragraph (1)—
- (a) applies whether or not a replacement member of the group is selected under paragraph 43;
 - (b) does not affect any requirements imposed by or under any enactment with respect to the constitution of a CMA group.

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

Attendance of other members

- 45 (1) At the invitation of the group chair of a CMA group, any reporting panel member who is not a member of the group may attend its meetings or otherwise take part in its proceedings.
- (2) But a 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 or her dissent from a conclusion of the group included in a report made by the group.
- (3) Nothing in sub-paragraph (1) is to be taken to prevent a CMA group from consulting any member of the CMA panel with respect to any matter or question with which the group is concerned.

Powers of chair pending group's constitution and first meeting

- 46 (1) While a CMA group is being constituted, the chair may take such steps as he or she considers appropriate to facilitate the work of the group once it has been constituted.
- (2) The steps taken must be steps that it would be within the power of the group to take, had it already been constituted.
- 47 (1) The chair may, on behalf of the CMA, exercise the power conferred by section 37(1), 48(1) or 64(1) of the Enterprise Act 2002 in respect of the reference of a matter—
- (a) while a CMA group is being constituted in connection with the reference;
 - (b) after a CMA group has been so constituted, but before it has held its first meeting.
- (2) Sections 34C, 46D and 62A of the Enterprise Act 2002 have effect subject to sub-paragraph (1).

Performance of functions of chair with respect to constitution etc of CMA group

- 48 (1) A function of the chair that is specified in sub-paragraph (4) may, with the consent of the CMA Board, be exercised on behalf of the chair by—
- (a) a person who is a member of both the CMA panel and the CMA Board, or
 - (b) a member of the CMA panel designated by the Secretary of State (whether generally or specifically) for the purposes of this paragraph.
- (2) The consent referred to in sub-paragraph (1) must specify the identity of the person by whom a function of the chair is to be exercised.
- (3) It may be given—
- (a) by reference generally to functions specified in sub-paragraph (4);
 - (b) by reference to specific functions, or functions of a particular description;
 - (c) by reference generally to CMA groups;
 - (d) by reference to specific matters or specific CMA groups, or by reference to matters or CMA groups of a particular description.
- (4) The functions are—
- (a) the chair's functions under paragraph 33 and under this Part of this Schedule;
 - (b) the chair's functions by or under any other enactment in respect of the constitution of a CMA group;

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

- (c) the chair’s functions under—
 - (i) Schedule 4A to the Gas Act 1986;
 - (ii) Schedule 5A to the Electricity Act 1989;
 - (iii) Schedule 22 to the Energy Act 2004;
 - (iv) Schedule 2 to the Civil Aviation Act 2012.

Independence of groups

- 49 (1) In making decisions that they are required or permitted to make by virtue of any enactment, CMA groups must act independently of the CMA Board.
- (2) Nothing in sub-paragraph (1) prevents—
 - (a) the CMA Board from giving information in its possession to a CMA group, or
 - (b) a CMA group giving information in its possession to the CMA Board.

Casting votes

- 50 If a CMA group’s vote on any decision is tied, the group chair is to have a casting vote.

Requirement to make rules of procedure for certain groups

- 51 (1) The CMA Board must make rules of procedure for merger reference groups, market reference groups, and special reference groups.
- (2) Those rules are subject to any provision made by or under any enactment in respect of the procedure of a CMA group.
- (3) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.
- (4) The CMA Board must publish rules made under this paragraph in whatever manner it considers appropriate for bringing them to the attention of those likely to be affected by them.
- (5) Subject to rules made under this paragraph, and to any provision made by or under any enactment, a CMA group of a type referred to in sub-paragraph (1) may determine its own procedure.
- (6) In this paragraph and paragraph 53—
 - (a) “market reference group” means a CMA group constituted in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;
 - (b) “merger reference group” means a CMA group constituted in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45, or 62 of the Enterprise Act 2002;
 - (c) “special reference group” means a CMA group constituted in connection with a reference under—
 - (i) section 11 of the Competition Act 1980;
 - (ii) section 41E of the Gas Act 1986;
 - (iii) section 56C of the Electricity Act 1989;
 - (iv) section 12, 14 or 17K of the Water Industry Act 1991;

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

- (v) article 15 of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));
 - (vi) section 13 of, or Schedule 4A to, the Railways Act 1993;
 - (vii) article 15 of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));
 - (viii) section 12 of the Transport Act 2000;
 - (ix) section 193 of the Communications Act 2003;
 - (x) article 3 of the Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005 (SI 2005/3172).
- 52 (1) In determining how to proceed in accordance with rules made for it by the CMA Board under paragraph 51(1), and in determining its own procedure under paragraph 51(5), a group must have regard to any guidance issued by the CMA Board.
- (2) Before issuing guidance for the purposes of this paragraph, or amending or revoking it, the CMA Board must consult such persons as it considers appropriate.
- 53 (1) Rules made under paragraph 51 may—
- (a) make different provision for different cases or different purposes;
 - (b) be varied or revoked by rules subsequently made under that paragraph.
- (2) They may in particular make provision—
- (a) for particular stages of a merger investigation, market investigation, or special investigation to be dealt with in accordance with a timetable and for revision of that timetable;
 - (b) as to the documents and information that must be given to a relevant group in connection with a merger investigation, market investigation or special investigation;
 - (c) as to the documents and information that a relevant group must give to other persons in connection with such an investigation.
- (3) Rules making provision as described in sub-paragraph (2)(a) or (2)(b) may, in particular, permit or require a relevant group to disregard documents or information given after a particular date.
- (4) Rules making provision as described in sub-paragraph (2)(c) may in particular make provision for the notification or publication of, and for consultation about, provisional findings of a relevant group.
- (5) Rules made under paragraph 51 may make provision as to the quorum of relevant groups.
- (6) They may make provision—
- (a) as to the extent (if any) to which persons interested or claiming to be interested in a matter under consideration that is specified or described in the rules are allowed—
 - (i) to be present before or heard by a relevant group, either by themselves or by their representatives;
 - (ii) to cross-examine witnesses;
 - (iii) otherwise to take part;

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

- (b) as to the extent (if any) to which sittings of a relevant group are to be held in public;
 - (c) generally in connection with any matters permitted by rules making provision as described in paragraph (a) or (b) (including, in particular, provision for a record of any hearings).
- (7) Rules made under paragraph 51 may make provision for—
- (a) the notification or publication of information relating to merger investigations, market investigations or special investigations;
 - (b) consultation about such investigations.
- (8) Rules made under paragraph 51 for market reference groups may make provision as to the involvement of any public interest expert in the market investigation in connection with the reference under section 140A of the Enterprise Act 2002 in relation to which the expert was appointed.
- (9) For the purposes of this paragraph—
- “market investigation” means an investigation carried out by a market reference group in connection with a reference under section 131, 132 or 140A of the Enterprise Act 2002;
 - “merger investigation” means an investigation carried out by a merger reference group in connection with a reference under section 32 of the Water Industry Act 1991 or section 22, 33, 45, or 62 of the Enterprise Act 2002;
 - “public interest expert” means a person appointed under section 141B of the Enterprise Act 2002 in relation to a reference under section 140A(6) of that Act;
 - “relevant group” means a market reference group, a merger reference group, or a special reference group;
 - “special investigation” means an investigation carried out by a special reference group in connection with a provision listed in paragraph 51(6)(c).

Procedure of other CMA groups

- 54 (1) Subject to any special or general directions given by the Secretary of State, and to any provision made by or under any enactment, a CMA group that is not a group of a type referred to in paragraph 51(1) may determine its own procedure.
- (2) It may, in particular, determine its quorum, and determine—
- (a) the extent (if any) to which persons interested or claiming to be interested in a matter under consideration are allowed—
 - (i) to be present before or heard by it, either by themselves or by their representatives;
 - (ii) to cross-examine witnesses;
 - (iii) otherwise to take part;
 - (b) the extent (if any) to which its sittings are to be held in public.
- (3) In determining its procedure under sub-paragraph (1), a CMA group must have regard to any guidance issued by the CMA Board.

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

CMA group decision: requirement for two thirds majority

- 55 For the purposes of paragraphs 56 to 58, a “qualifying majority decision” is a decision made by a CMA group which is that of at least two-thirds of the members of the group.
- 56 (1) This paragraph applies for the purposes of Part 3 of the Enterprise Act 2002.
- (2) Where a decision of a CMA group under section 35(1) or 36(1) of that Act that there is an anti-competitive outcome is not a qualifying majority decision, it is to be treated as a decision under that section that there is not an anti-competitive outcome.
- (3) Where a decision of a CMA group under section 47 of that Act is not a qualifying majority decision—
- (a) in the case of a decision that a relevant merger situation has been created, it is to be treated as a decision under section 47 that no such situation has been created;
 - (b) in the case of a decision that the creation of a relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods and services, it is to be treated as a decision under section 47 that the creation of that situation has not resulted, or may be expected not to result, in such a substantial lessening of competition;
 - (c) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, it is to be treated as a decision under section 47 that no such arrangements are in progress or in contemplation;
 - (d) in the case of a decision that the creation of such a situation as is mentioned in paragraph (c) may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods and services, it is to be treated as a decision under section 47 that the creation of that situation may be expected not to result in such a substantial lessening of competition.
- (4) Where a decision of a CMA group under section 63 of that Act is not a qualifying majority decision—
- (a) in the case of a decision that a special merger situation has been created, it is to be treated as a decision under section 63 that no such situation has been created;
 - (b) in the case of a decision that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a special merger situation, it is to be treated as a decision under section 63 that no such arrangements are in progress or in contemplation.
- (5) Expressions used in this paragraph are to be construed in accordance with Part 3 of the Enterprise Act 2002.
- 57 (1) This paragraph applies for the purposes of Part 4 of the Enterprise Act 2002.
- (2) Where a decision under section 134, 141 or 141A of that Act is not a qualifying majority decision—
- (a) in the case of a decision on an ordinary reference that a feature or combination of features of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom, it is to be

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

treated as a decision that the feature or (as the case may be) combination of features of that relevant market does not prevent, restrict or distort such competition;

- (b) in the case of a decision on a cross-market reference that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom, it is to be treated as a decision that that feature or (as the case may be) combination of features as it relates to goods or services of those descriptions does not prevent, restrict or distort such competition.

- (3) Accordingly, a CMA group is to be treated as having decided under section 134, 141 or 141A that there is no adverse effect on competition in relation to an ordinary reference or a cross-market reference if—

- (a) one or more than one decision of the group, in relation to the reference, is to be treated as mentioned in sub-paragraph (2)(a) or (as the case may be) (b), and
- (b) there is, in relation to the reference, no other relevant decision of the group.

- (4) “Relevant decision”, in sub-paragraph (3)(b), means—

- (a) in relation to an ordinary reference, a decision that is not to be treated as mentioned in sub-paragraph (2)(a), and which is that a feature or combination of features of a relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom;
- (b) in relation to a cross-market reference, a decision that is not to be treated as mentioned in sub-paragraph (2)(b), and which is that a feature or a combination of the features specified in the reference, as that feature or combination of features relates to goods or services of one or more than one of the descriptions so specified, prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the United Kingdom or a part of the United Kingdom.

- (5) Where a decision of a CMA group under section 141A of that Act is not a qualifying majority decision, in the case of a decision under section 141A(4) that the feature or combination of features in question operates or may be expected to operate against the public interest, it is to be treated as a decision under section 141A that the feature or combination of features in question does not operate nor may be expected to operate against the public interest.

- (6) Expressions used in this paragraph are to be construed in accordance with Part 4 of the Enterprise Act 2002.

58

A decision made by a CMA group is also subject to any other provision made by or under any enactment about decisions that are not qualifying majority decisions.