

SCHEDULE 1

Amendments to the Competition Act 1998

18. After section 31 there is inserted—

“31A Commitments

(1) Subsection (2) applies in a case where the OFT has begun an investigation under section 25 but has not made a decision (within the meaning given by section 31(2)).

(2) For the purposes of addressing the competition concerns it has identified, the OFT may accept from such person (or persons) concerned as it considers appropriate commitments to take such action (or refrain from taking such action) as it considers appropriate.

(3) At any time when commitments are in force the OFT may accept from the person (or persons) who gave the commitments—

- (a) a variation of them if it is satisfied that the commitments as varied will address its current competition concerns;
- (b) commitments in substitution for them if it is satisfied that the new commitments will address its current competition concerns.

(4) Commitments under this section—

- (a) shall come into force when accepted; and
- (b) may be released by the OFT where—
 - (i) it is requested to do so by the person (or persons) who gave the commitments; or
 - (ii) it has reasonable grounds for believing that the competition concerns referred to in subsection (2) or (3) no longer arise.

(5) The provisions of Schedule 6A to this Act shall have effect with respect to procedural requirements for the acceptance, variation and release of commitments under this section.

31B Effect of commitments under section 31A

(1) Subsection (2) applies if the OFT has accepted commitments under section 31A (and has not released them).

(2) In such a case, the OFT shall not—

- (a) continue the investigation,
- (b) make a decision (within the meaning of section 31(2)), or
- (c) give a direction under section 35,

in relation to the agreement or conduct which was the subject of the investigation (but this subsection is subject to subsections (3) and (4)).

(3) Nothing in subsection (2) prevents the OFT from taking any action in relation to competition concerns which are not addressed by commitments accepted by it.

(4) Subsection (2) also does not prevent the OFT from continuing the investigation, making a decision, or giving a direction where—

- (a) it has reasonable grounds for believing that there has been a material change of circumstances since the commitments were accepted;

Status: This is the original version (as it was originally made).

- (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
 - (c) it has reasonable grounds for suspecting that information which led it to accept the commitments was incomplete, false or misleading in a material particular.
- (5) If, pursuant to subsection (4), the OFT makes a decision or gives a direction the commitments are to be treated as released from the date of that decision or direction.

31C Review of commitments

(1) Where the OFT is reviewing or has reviewed the effectiveness of commitments accepted under section 31A it must, if requested to do so by the Secretary of State, prepare a report of its findings.

(2) The OFT must—

- (a) give any report prepared by it under subsection (1) to the Secretary of State; and
- (b) publish the report.

31D Guidance

(1) The OFT must prepare and publish guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A.

(2) The OFT may at any time alter the guidance.

(3) If the guidance is altered, the OFT must publish it as altered.

(4) No guidance is to be published under this section without the approval of the Secretary of State.

(5) The OFT may, after consulting the Secretary of State, choose how it publishes its guidance.

(6) If the OFT is preparing or altering guidance under this section it must consult such persons as it considers appropriate.

(7) If the proposed guidance or alteration relates to a matter in respect of which a regulator exercises concurrent jurisdiction, those consulted must include that regulator.

(8) When exercising its discretion to accept commitments under section 31A, the OFT must have regard to the guidance for the time being in force under this section.

31E Enforcement of commitments

(1) If a person from whom the OFT has accepted commitments fails without reasonable excuse to adhere to the commitments (and has not been released from them), the OFT may apply to the court for an order—

- (a) requiring the defaulter to make good his default within a time specified in the order; or
- (b) if the commitments relate to anything to be done in the management or administration of an undertaking, requiring the undertaking or any of its officers to do it.

(2) An order of the court under subsection (1) may provide for all the costs of, or incidental to, the application for the order to be borne by—

- (a) the person in default; or
- (b) any officer of an undertaking who is responsible for the default.

(3) In the application of subsection (2) to Scotland, the reference to “costs” is to be read as a reference to “expenses”.”.