

SCHEDULE 4

Saving and transitional provision

PART 3

CMA investigations under Part 1 of the 1998 Act

Interpretation

4.—(1) In this Part of this Schedule—

“investigation” means an investigation under section 25 of the 1998 Act;

“domestic element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(2), (4) or (6) of the 1998 Act;

“EU element”, in relation to an investigation, means any part of the investigation conducted by virtue of section 25(3), (5) or (7) of the 1998 Act;

(2) References in this Part of this Schedule to cases in which the CMA is conducting an investigation at a particular time include cases in which the CMA would be conducting such an investigation but for section 31B(2) ^{M1} of the 1998 Act (suspension of investigation where commitments given under section 31A ^{M2} of that Act).

(3) References in this Part of this Schedule to the CMA are to be read as including a reference to a regulator (as defined in section 54 of the 1998 Act ^{M3}).

Commencement Information

I1 Sch. 4 para. 4 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1(1)

Marginal Citations

M1 Section 31B(2) was inserted by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

M2 Section 31A was inserted by S.I. 2004/1261 and subsequently amended by paragraphs 1 and 12 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

M3 Section 54 was amended by paragraph 38(1) and (41) of Schedule 25 to the Enterprise Act 2002, section 371(5) of the Communications Act 2003, section 51(1) to (4) of, paragraphs 1 and 33 of Schedule 5 to, and paragraphs 8 and 11 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraph 32(1) and (2) of Schedule 7 to the Water Act 2003 (c. 37), section 74(5) of the Health and Social Care Act 2012, section 67(2) of and paragraph 9 of Schedule 8 to the Financial Services (Banking Reform) Act 2013 (c. 33), and by S.I. 2015/1682 and S.I. 2004/1261.

Termination of EU elements of on-going investigations

5. Where the CMA is conducting an investigation immediately before [^{F1}IP completion day], it may not continue any EU elements of the investigation on and after [^{F1}IP completion day].

Changes to legislation: There are currently no known outstanding effects for the The Competition (Amendment etc.) (EU Exit) Regulations 2019, PART 3. (See end of Document for details)

Textual Amendments

F1 Words in Sch. 4 para. 5 substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(2)**

Commencement Information

I2 Sch. 4 para. 5 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

6.—(1) This paragraph applies where, immediately before [^{F2}IP completion day], the CMA is conducting an investigation which has both domestic elements and EU elements.

(2) Anything done before [^{F2}IP completion day] for the purposes of, or in connection with, the EU elements of the investigation is to be treated, on and after [^{F2}IP completion day], as done for the purposes of, or in connection with, the domestic elements of the investigation.

(3) The reference in sub-paragraph (2) to anything done includes anything omitted to be done.

(4) On and after [^{F2}IP completion day]—

(a) a notice validly issued before [^{F2}IP completion day] under section 26^{M4}, 26A^{M5}, or 27^{M6} of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued for the purposes of the domestic elements of the investigation;

(b) a warrant validly issued, or an application for a warrant made, before [^{F2}IP completion day] under section 28^{M7} or 28A^{M8} of the 1998 Act for the purposes of the EU elements of the investigation is to be treated as validly issued or made in connection with the domestic elements of the investigation;

(c) documents and other information obtained, and representations made, before [^{F2}IP completion day] for the purposes of, or in connection with, the EU elements of the investigation are to be treated as obtained or made for the purposes of, or in connection with, the domestic elements of the investigation; and

(d) a commitment accepted under section 31A of the 1998 Act before [^{F2}IP completion day] for the purposes of addressing a competition concern identified during the course of the EU elements of the investigation, and not released before [^{F2}IP completion day], continues in force until released.

(5) Sub-paragraph (4) is without prejudice to the generality of sub-paragraph (2).

(6) On and after [^{F2}IP completion day] a notice given before [^{F2}IP completion day] under section 31(1)^{M9} of the 1998 Act is to be treated as if any reference to a proposed decision described in section 31(2)(c) or (d) of the 1998 Act were omitted.

Textual Amendments

F2 Words in Sch. 4 para. 6 substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(2)**

Commencement Information

I3 Sch. 4 para. 6 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M4** Section 26 was amended by paragraphs 1 and 6 of Schedule 5 to, and paragraphs 8 and 9 of Schedule 15 to, the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (20) of Schedule 25 to the Enterprise Act 2002, and [S.I. 2004/1261](#).
- M5** Section 26A was inserted by section 39 of the Enterprise and Regulatory Reform Act 2013.
- M6** Section 27 was amended by paragraphs 1 and 7 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013, paragraphs 38(1) and (21) of Schedule 25 to the Enterprise Act 2002, paragraph 21 of Schedule 2 to the [Criminal Justice and Police Act 2001 \(c. 16\)](#) and [S.I. 2004/1261](#).
- M7** Section 28 was amended by paragraphs 1 and 2 of Schedule 13 to, and paragraphs 1 and 8 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013, section 203(1) and (2) of, and paragraphs 38(1) and (22) of Schedule 25 to, the Enterprise Act 2002, paragraph 21 of Schedule 2 to the Criminal Justice and Police Act 2001 and [S.I. 2004/1261](#).
- M8** Section 28A was inserted by [S.I. 2004/1261](#) and amended by paragraphs 1 and 3 of Schedule 13 to, and paragraphs 1 and 9 of Schedule 5 to, the Enterprise and Regulatory Reform Act 2013.
- M9** Section 31(1) was amended by paragraphs 1 and 10 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

Completed investigations terminated by decisions under section 31(2)(c) or (d) of the 1998 Act

7.—(1) This paragraph applies where, before [^{F3}IP completion day], the CMA has made a decision within the meaning of section 31(2)(c) or (d) of the 1998 Act.

(2) On and after [^{F4}IP completion day], in connection with the decision, the enactments mentioned in sub-paragraphs (3) to (8) have effect as described there.

(3) Part 1 of the 1998 Act has effect—

- (a) without the modifications made by Part 2 of these Regulations, other than the modifications made by regulations 21(3), 22 and 23 (principles to be applied in determining questions), and
- (b) [^{F5}except in relation to cases in which the European Commission has continued competence after IP completion day in accordance with Article 92 of the EU withdrawal agreement,] with the further modifications set out in sub-paragraph (4).

(4) The further modifications mentioned in sub-paragraph (3)(b) are as follows—

- (a) references (however expressed) to a decision of the European Commission or a Member State competition authority that there has been an infringement of the prohibition in Article 101(1) or 102 of the Treaty on the Functioning of the European Union do not include a decision made on or after [^{F6}IP completion day];
- (b) paragraph 21(3) of Schedule 8A to the 1998 Act has effect as if—
 - (i) in [^{F7}paragraph] (a), after “if the competition authority makes a decision” there were inserted “ before [^{F8}IP completion day] ”;
 - (ii) the “and” at the end of [^{F7}paragraph] (a) were omitted;
 - (iii) in [^{F7}paragraph] (b), for “otherwise” there were substituted “ if the competition authority closes the investigation before [^{F8}IP completion day] without making such a decision ”; and
 - (iv) after [^{F7}paragraph] (b) there were inserted—
“; and

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(c) otherwise, at the end of the period of one year beginning with [^{F8}IP completion day].”.

(5) Section 16 of the 2002 Act ^{M10} has effect without the modification made by regulation 33 of these Regulations.

(6) The enactments listed in [^{F9}paragraphs 2 to 9 and 12 to 15] of Schedule 1 to these Regulations and in paragraphs 11 and 13 of Part 3 of Schedule 2 to these Regulations have effect without the modifications made in those paragraphs.

[^{F10}(6A) The Communications Act 2003 applies without the modifications made by paragraph 11 of Schedule 1 to these Regulations, except for the modifications made by sub-paragraphs (3) to (7) of that paragraph.]

(7) Subordinate legislation made under Part 1 of the 1998 Act has effect without the modifications made by Part 1 of Schedule 2 to these Regulations, except for the modifications made by paragraph 4(4) of that Schedule (amendments to the Competition Act 1998 (Competition and Market Authority's Rules) Order 2014).

(8) The Competition Appeal Tribunal Rules 2015 have effect without the modifications made by paragraph 8 of Schedule 2 to these Regulations, except for the modifications made by sub-paragraphs (4), (5) and (6) of that paragraph.

(9) References in sub-paragraph (4)(a) to a decision by a Member State competition authority are to be interpreted in accordance with paragraph 3(6) of Schedule 8A to the 1998 Act (see paragraph (c) of that provision).

Textual Amendments

- F3** Words in Sch. 4 para. 7(1) substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(a)**
- F4** Words in Sch. 4 para. 7(2) substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(a)**
- F5** Words in Sch. 4 para. 7(3)(b) inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(b)**
- F6** Words in Sch. 4 para. 7(4)(a) substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(c)**
- F7** Word in Sch. 4 para. 7(4)(b)(i)-(iv) substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(d)(i)**
- F8** Words in Sch. 4 para. 7(4)(b)(i)-(iv) substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(d)(ii)**
- F9** Words in Sch. 4 para. 7(6) substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(e)**
- F10** Sch. 4 para. 7(6A) inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(3)(f)**

Commencement Information

- I4** Sch. 4 para. 7 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

Marginal Citations

- M10** Section 16 was amended by paragraph 81(a) of Schedule 9 to the [Crime and Courts Act 2013 \(c. 22\)](#), [paragraph 21](#) of Schedule 8 to the Consumer Rights Act 2015 and [S.I. 2012/1809](#).

[^{F11}Appropriate level of a penalty

7A.—(1) This paragraph applies where—

- (a) before IP completion day, a penalty or a fine has been imposed by the European Commission, or a court or other body in another Member State, in respect of an agreement or conduct; or
- (b) on or after IP completion day, a penalty or fine has been imposed by the European Commission in respect of an agreement or conduct in relation to which it has continued competence in accordance with Article 92 of the EU withdrawal agreement.

(2) The CMA, the Tribunal or the appropriate court must take that penalty or fine into account when setting the amount of penalty under Part 1 of the 1998 Act in relation to that agreement or conduct.

(3) In sub-paragraph (2), “the appropriate court” means—

- (a) in relation to England and Wales, the Court of Appeal;
- (b) in relation to Scotland, the Court of Session;
- (c) in relation to Northern Ireland, the Court of Appeal in Northern Ireland;
- (d) the Supreme Court.]

Textual Amendments

F11 Sch. 4 para. 7A inserted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(4)**

Commencement Information

I5 Sch. 4 para. 7A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

[^{F12}Cases subject to relevant separation agreement law]

[^{F13}**8.**—(1) In this paragraph and paragraphs 8A and 8B—

“Regulation 1/2003” means Council Regulation [\(EC\) No 1/2003](#) of 16th December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty as it has effect from time to time for the purposes of relevant separation agreement law; and

“relevant decision” means—

a decision adopted by the European Commission pursuant to article 7(1) of Regulation 1/2003; or

a decision adopted by the European Commission pursuant to article 9(1) of Regulation 1/2003.

(2) This paragraph applies where before IP completion day—

- (a) under article 11(6) of Regulation 1/2003, the CMA was relieved of competence to apply one or both of articles 101 (in relation to an agreement) or 102 (in relation to conduct), by the European Commission initiating proceedings in relation to that agreement or conduct;
- (b) the European Commission had made a relevant decision; and
- (c) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—

- (i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or

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- (ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.
- (3) On and after IP completion day the CMA must not—
- (a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;
 - (b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or
 - (c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;

which conflicts with any remedial directions given or commitments made binding by the relevant decision.

Textual Amendments

- F12** Sch. 4 para. 8 heading substituted (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(5)**
- F13** Sch. 4 paras. 8-8B substituted for Sch. 4 para. 8 (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(6)**

Commencement Information

- I6** Sch. 4 para. 8 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

8A.—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation into an agreement, decision, concerted practice or abuse of a dominant position under Regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement.

(2) While the Commission’s investigation is ongoing, the CMA must not open or re-open any investigation by virtue of section 25(2), (4) or (6) of the 1998 Act into the competition concerns with which the Commission’s investigation is concerned.

(3) Nothing in sub-paragraph (2) prevents the CMA from opening an investigation by virtue of section 25(2), (4) or (6) into competition concerns relating to an agreement, decision, concerted practice or abuse of a dominant position insofar as those concerns relate to the effects arising from the agreement, decision, concerted practice or abuse of a dominant position on and after IP completion day.

Textual Amendments

- F13** Sch. 4 paras. 8-8B substituted for Sch. 4 para. 8 (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(6)**

Commencement Information

- I7** Sch. 4 para. 8A in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

8B.—(1) This paragraph applies where on and after IP completion day the European Commission has continued competence in relation to an investigation under regulation 1/2003 in accordance with article 92 of the EU withdrawal agreement and—

- (a) the European Commission has made a relevant decision;
 - (b) the relevant decision has not been annulled in full or in part by the European Court insofar as it related to—
 - (i) the finding of an infringement or making of any directions in a decision adopted pursuant to article 7(1) of Regulation 1/2003; or
 - (ii) commitments accepted under a decision adopted pursuant to article 9(1) of Regulation 1/2003.
- (2) On and after IP completion day the CMA must not—
- (a) accept a commitment under section 31A of the 1998 Act in relation to the agreement or conduct to which the relevant decision relates;
 - (b) give a direction under section 32 of the 1998 Act in relation to the agreement to which the relevant decision relates; or
 - (c) give a direction under section 33 of the 1998 Act in relation to the conduct to which the relevant decision relates;
- which conflicts with any directions given or commitments made binding by the relevant decision.]

Textual Amendments

F13 Sch. 4 paras. 8-8B substituted for Sch. 4 para. 8 (31.12.2020 immediately before IP completion day) by [The Competition \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1343\)](#), regs. 1(1), **36(6)**

Commencement Information

I8 Sch. 4 para. 8B in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Competition (Amendment etc.) (EU Exit) Regulations 2019, PART 3.