

SCHEDULES

SCHEDULE 2

Section 31

RECOGNISED ORGANISATIONS: COMPETITION EXCLUSIONS

1 Schedule 3 to the Competition Act 1998 (general exclusions) is amended as follows.

2 (1) Paragraph 9 (agricultural products) is amended as follows.

(2) For sub-paragraph (1) substitute—

“(1) The Chapter 1 prohibition does not apply to an agreement to the extent that it is an agreement between the members of—

- (a) a recognised producer organisation (“PO”), or
- (b) a recognised association of producer organisations (“APO”),

for the PO or APO (as the case may be) to carry out one or more of the activities mentioned in sub-paragraph (1A) on behalf of its members (for all or part of their total production), provided that Conditions A and B are also met.

This exclusion is referred to in this paragraph as the “RPO exclusion”.

(1A) The activities are—

- (a) planning production;
- (b) optimising production costs;
- (c) concentrating supply;
- (d) placing products on the market;
- (e) negotiating supply contracts.

(1B) Condition A is that—

- (a) in the case of a PO, the PO concentrates supply and places the products of its members on the market, whether or not there is a transfer of ownership of agricultural products by the producers to the PO, or
- (b) in the case of an APO, the APO concentrates supply and places the products of the members of the POs it represents on the market, whether or not there is a transfer of ownership of agricultural products by the producers to the APO or to any of the POs the APO represents.

(1C) Condition B is that—

- (a) in the case of a PO, none of the producers concerned are members of any other PO as regards the products covered by the activities mentioned in sub-paragraph (1A) to which the agreement relates, or
- (b) in the case of an APO, none of the producers concerned are members of a PO that is a member of any other APO as

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regards the products covered by the activities mentioned in sub-paragraph (1A) to which the agreement relates.

(1D) But the Secretary of State may decide that the RPO exclusion applies if Condition B is not met, if—

- (a) every producer which is a member of more than one PO holds distinct production units located in different geographical areas, and
- (b) the Secretary of State considers that it is appropriate in all the circumstances for the RPO exclusion to apply.

(1E) If the Secretary of State is considering whether to make a decision under sub-paragraph (1D), the Secretary of State may by notice in writing require any party to the agreement in question to give the Secretary of State such information in connection with the agreement as the Secretary of State may require.”

(3) Omit sub-paragraph (2).

(4) In sub-paragraph (3), for “agriculture exclusion” substitute “RPO exclusion”.

(5) For sub-paragraph (9) substitute—

“(9) In this paragraph—

“agricultural product” means a product that falls within a sector mentioned in Schedule 1 to the Agriculture Act 2020;

“recognised association of producer organisations” means an association recognised under section 30 of that Act;

“recognised producer organisation” means a producer organisation recognised under section 30 of that Act.”

3 After paragraph 9, insert—

“10 (1) The Chapter 1 prohibition does not apply to an agreement to the extent that it is an agreement between the members of a recognised interbranch organisation that has the object of carrying out one or more specified activities, provided that the condition in sub-paragraph (2) is also met.

This exclusion is referred to in this paragraph as the “RIBO exclusion”.

(2) The condition in this sub-paragraph is that the organisation has notified the agreement to the CMA and provided all further details required by the CMA, and—

- (a) the CMA has decided that it is appropriate for the RIBO exclusion to apply, or
- (b) within two months of the CMA receiving all the details it requires, the CMA has not decided that it is inappropriate for the RIBO exclusion to apply.

(3) In deciding whether it is appropriate for the RIBO exclusion to apply, the CMA must consider whether the benefit of the agreement to the specified activities of the recognised interbranch organisation outweighs any prevention, restriction or distortion of competition within the United Kingdom as a result of the agreement.

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- (4) The CMA may at any time give a direction to the effect that the RIBO exclusion no longer applies to a particular agreement.
- (5) Sub-paragraphs (4) to (8) of paragraph 9 apply to a direction under this paragraph as they apply to a direction under paragraph 9.
- (6) In this paragraph—
 - “recognised interbranch organisation” means an organisation of agricultural businesses recognised under section 30 of the Agriculture Act 2020;
 - “specified activities” means the activities specified in regulations under section 30(6)(e) of that Act.”