

## SCHEDULES

### SCHEDULE 9

#### FINAL UNDERTAKINGS AND ORDERS: POWER TO CONDUCT TRIALS

- 4 After [section 161A](#) (acceptance of enforcement undertakings: Part 4) (inserted by [paragraph 16](#) of [Schedule 11](#)) insert—

#### *“Implementation trials of final orders and undertakings*

#### **161B Implementation trials: purpose and interpretation**

- (1) This section and [sections 161C](#) to [161E](#) make provision in relation to the acceptance of undertakings and making of orders by a relevant authority on a trial basis for the purpose of assessing the effectiveness of qualifying remedial action (and the acceptance of undertakings and making of orders on that basis is referred to in this Part as an “implementation trial”).
- (2) In this section and in [sections 161C](#) to [161E](#) “relevant authority” means the CMA or the Secretary of State.
- (3) In this Part—
  - “implementation trial measure” means an undertaking accepted, or order made, under [section 161C](#) (and references to the imposition of such a measure are to be read as the acceptance of an undertaking or the making of an order, as the case may be);
  - “implementation trial period” means, in relation to an implementation trial measure, the period—
    - (a) beginning with the day on which the relevant authority begins the implementation trial, and
    - (b) ending with the last day on which the implementation trial measure is to have effect (see [subsections \(4\)](#) and [\(5\)](#));
  - “qualifying remedial action” means remedial action in respect of—
    - (a) a matter concerning the provision or publication of information to consumers (whether directly or through an intermediary), or
    - (b) any other matter specified in regulations made by the Secretary of State;
  - “relevant adverse effect” means—
    - (a) where the relevant authority is the CMA, an adverse effect on competition identified in the report mentioned in [section 138\(1\)](#);
    - (b) where the relevant authority is the Secretary of State—
      - (i) an adverse effect on competition identified in the report mentioned in [section 146\(1\)](#);

---

*Status: This is the original version (as it was originally enacted).*

---

- (ii) an effect adverse to the public interest identified in the report mentioned in section 146A(1);
  - “remedial action” means an action—
    - (a) where the relevant authority is the CMA, to be taken in accordance with section 138(2) or [section 162A\(5\)](#);
    - (b) where the relevant authority is the Secretary of State, to be taken in accordance with section 147(2) or 147A(2) (as the case may be).
- (4) The last day on which an implementation trial measure is to have effect is the earlier of—
- (a) the day specified under [section 161D\(5\)\(b\)\(ii\)](#), and
  - (b) the day on which action is taken under section 138(2), 147(2) or 147A(2) (as the case may be) in relation to the relevant adverse effect which the relevant authority considers concerns the same qualifying matter.
- (5) But where—
- (a) an implementation trial measure is imposed in accordance with this section, and
  - (b) the CMA extends, under section 138A(3), the period within which its duty under section 138(2) is required to be discharged in accordance with section 138A(A3) in relation to the measure,
- the last day on which the implementation trial measure is to have effect is the last day of that period as so extended.

### **161C Power to conduct implementation trials**

- (1) The CMA may, in relation to a market investigation reference, begin an implementation trial where—
- (a) subsection (2) of section 138 applies (see subsection (1) of that section), and
  - (b) the CMA has not taken, but is minded to take, qualifying remedial action.
- (2) The Secretary of State may, in relation to a restricted PI reference or a full PI reference, begin an implementation trial where—
- (a) subsection (2) of section 147, or subsection (2) of 147A (as the case may be), applies (see subsection (1) of the section in question), and
  - (b) the Secretary of State has not taken, but is minded to take, qualifying remedial action.
- (3) [Subsections \(1\)](#) and [\(2\)](#) are subject to the duty to publish notices in [section 161D](#).
- (4) The relevant authority begins an implementation trial by—
- (a) accepting, from such persons as the relevant authority considers appropriate, undertakings under this section to take action specified or described in the undertakings, or
  - (b) making an order under this section,
- for the purposes of assessing, during the implementation trial period, the likely effectiveness of the qualifying remedial action.

---

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

---

- (5) Where the relevant authority begins an implementation trial, the relevant authority may also—
- (a) accept, from such persons as the relevant authority considers appropriate, undertakings under this section to take action specified or described in the undertakings, or
  - (b) make an order under this section,
- in the circumstances mentioned in subsection (6).
- (6) The circumstances are that the relevant authority considers that accepting the undertakings or making the order would be likely to contribute to, or otherwise be of use for purposes of, remedying, mitigating or preventing, during the implementation trial period—
- (a) an adverse effect on competition identified in the report concerned or (as the case may be) an effect adverse to the public interest which has resulted from, or may be expected to result from, the features or combinations of features mentioned;
  - (b) any detrimental effect on customers so far as it has resulted from, or may be expected to result from, any such adverse effect on competition.

#### **161D Implementation trials: notices**

- (1) Before the relevant authority begins an implementation trial under [section 161C\(4\)](#), the relevant authority must publish—
- (a) a provisional implementation trial notice, and
  - (b) a final implementation trial notice (but see [subsection \(4\)](#)).
- (2) A provisional implementation trial notice must—
- (a) specify each implementation trial measure the relevant authority is minded to impose for the purposes of the implementation trial;
  - (b) specify the relevant adverse effect with which each measure is seeking to deal;
  - (c) specify any other facts which the relevant authority considers justify the imposition of each measure;
  - (d) specify, in relation to each measure—
    - (i) how the relevant authority intends to assess the likely effect of the measure, and
    - (ii) the last day on which the relevant authority intends for the measure to have effect;
  - (e) invite the making of representations by the persons on which the relevant authority is minded to impose one or more implementation trial measure (“implementation trial participants”) about the matters set out in the notice;
  - (f) specify the means by which, and the time by which, such representations must be made.
- (3) The time specified under [subsection \(2\)\(f\)](#) by which representations must be made must be at least 15 days after the date on which the provisional implementation trial notice is published.

- (4) A relevant authority may publish a final implementation trial notice only where—
- (a) the relevant authority has published a provisional implementation trial notice under [subsection \(1\)](#),
  - (b) the time for the implementation trial participants to make representations to the relevant authority in accordance with the notice has expired, and
  - (c) after considering such representations (if any), it appears to the relevant authority that it is appropriate to begin an implementation trial under [section 161C\(4\)](#).
- (5) A final implementation trial notice must specify—
- (a) the implementation trial measures the relevant authority intends to impose for the purposes of the implementation trial,
  - (b) in relation to each such measure—
    - (i) how the relevant authority intends to assess the likely effect of the measure, and
    - (ii) the last day on which the measure is to have effect.

#### **161E Implementation trials: supplementary**

- (1) The relevant authority may not accept an undertaking from a person under [section 161C](#) unless it has provided the person with information about the possible consequences of failing to comply with the undertaking.
- (2) The CMA may not begin an implementation trial under [section 161C\(4\)](#)—
- (a) in respect of qualifying remedial action that would be taken in accordance with subsection (2) of section 138, after the end of the period within which the CMA would otherwise have been required to discharge its duty under that subsection;
  - (b) in respect of qualifying remedial action that would be taken in accordance with [section 162A\(5\)](#), after the end of the period mentioned in [section 162A\(6\)](#).
- (3) Subsections (3), (5) and (6) of section 138 apply to action taken by the CMA under [section 161C](#) as they apply to action taken by the CMA under section 138(2).
- (4) Subsections (3)(b), (4), (5) and (6) of section 147 apply to action taken by the Secretary of State under [section 161C](#) in relation to a restricted PI reference as they apply to action taken by the Secretary of State under section 147(2).
- (5) Subsections (3) and (4)(b) of section 147A apply to action taken by the Secretary of State under [section 161C](#) in relation to a full PI reference as they apply to action taken by the Secretary of State under section 147A(2).
- (6) Subsections (3) to (5) of section 159 apply to undertakings accepted under [section 161C](#) as they apply to undertakings accepted under section 159(1).
- (7) Subsections (3) and (4) of section 161 apply to orders made under [section 161C](#) as they apply to orders made under section 161(1).”