

## SCHEDULE

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Form N                    1 —

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Explanatory Note

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### **Form of application**

1.—(1) An application under section 13 or 14 for an agreement to be examined, or under section 21 or 22 for conduct to be considered, shall consist of:

- (a) Form N;
- (b) the copies of Form N required by rule 3 below; and
- (c) the fee payable under rule 6 below.

(2) The documents referred to in sub-paragraphs (1)(a) and (b) above shall be submitted to the Director General of Fair Trading, and the fee referred to in sub-paragraph (1)(c) above shall be paid in accordance with rule 6 below.

### **Joint applications**

2. Where a joint application is submitted, Form N shall be submitted to the Director General of Fair Trading by or on behalf of all the applicants, and a joint representative may be appointed as authorised to act on behalf of some or all of the applicants for the purposes of these rules.

### **Copies**

3.—(1) Subject to paragraph (2) below, two copies of Form N, in addition to the original, shall be submitted to the Director General of Fair Trading.

(2) If, in the applicant's opinion, a regulator, or more than one regulator, has or may have concurrent jurisdiction with the Director General of Fair Trading under Part I, one extra copy of Form N shall be submitted to the Director General of Fair Trading for each such regulator.

(3) Supporting documents submitted as part of Form N shall be either originals or true copies, and the applicant shall certify that each copy is a true copy of the original.

### **Content of application**

4.—(1) The information submitted as Form N shall, subject to paragraph (3) below, be correct and complete.

(2) If the applicant considers that the Director would find any part of the information contained in the application to be confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 30 below, he shall set out that part of the information in a separate annex to the application marked "confidential information" and provide a written explanation as to why he considers that the Director should treat it as such.

(3) The Director General of Fair Trading may, by giving notice in writing to the applicant, dispense with the obligation to submit any particular information, including any supporting document, forming part of Form N, if he considers that such information or document is unnecessary for the examination of the agreement, or the consideration of the conduct, which is the subject of the application.

(4) Where the applicant knows of material changes in the information contained in the application he shall without delay communicate those changes to:

- (a) the Director General of Fair Trading; or
- (b) if the Director General of Fair Trading has informed the applicant, in accordance with regulations made under section 54 (concurrency), that a regulator will be exercising prescribed functions (as defined in such regulations) in relation to the agreement or conduct which is the subject of the application, that regulator.

## **Date of application**

5.—(1) Except where paragraph (3) below applies, an application is made (and notification for the purposes of sections 13, 14, 21 or 22, whichever is applicable, is given) on the date on which:

- (a) Form N is received by the Director General of Fair Trading; and
- (b) any fee payable in respect of the application has been paid in accordance with rule 6 below.

(2) The Director General of Fair Trading shall acknowledge receipt of an application by giving notice in writing to the applicant without delay.

(3) Where:

- (a) the Director General of Fair Trading; or
- (b) if the Director General of Fair Trading has informed the applicant, in accordance with regulations made under section 54 (concurrency), that a regulator will be exercising prescribed functions (as defined in such regulations) in relation to the agreement or conduct which is the subject of the application, that regulator,

finds that the information submitted as Form N is incomplete he shall, without delay and in any event within one month from the date on which that information was received by the Director General of Fair Trading and any fee payable in respect of the application has been paid in accordance with rule 6 below, give notice in writing to the applicant of which information, by reference to Annex 1 hereto, is outstanding.

(4) Where the Director has invoked paragraph (3) above he shall give notice in writing to the applicant of such time limit as that Director considers is appropriate for the outstanding information to be received by him.

(5) Where the Director has invoked paragraph (3) above the application shall be made (and notification for the purposes of sections 13, 14, 21 or 22, whichever is applicable, shall be given) on the date on which he receives the outstanding information and any fee payable in respect of the application has been paid in accordance with rule 6 below.

(6) If the Director who has invoked paragraph (3) above has not received the outstanding information by the date of expiry of the time limit notified to the applicant under paragraph (4) above, or of such further period, if any, as he considers appropriate, he shall return the information submitted as Form N to the applicant and shall inform him in writing that his application has not been made in accordance with this rule.

## **Fees for applications**

6.—(1) A fee of the amount referred to in paragraph (2) below shall be payable by the applicant in connection with the exercise by the Director of any of the following functions:

- (a) examining an agreement in respect of which an application under section 13 has been made;
- (b) examining an agreement in respect of which an application under section 14 has been made;
- (c) considering conduct in respect of which an application under section 21 has been made; and
- (d) considering conduct in respect of which an application under section 22 has been made.

(2) The amount of the fee payable under paragraph (1) above shall be:

- (a) in a case falling within sub-paragraph (a) or (c) of that paragraph, the amount specified in Part 1 of Annex 2 hereto; and
- (b) in a case falling within sub-paragraph (b) or (d) of that paragraph, the amount specified in Part 2 of Annex 2 hereto.

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(3) Where a joint application is submitted the applicants shall be jointly and severally liable for any fee payable in respect of the application.

(4) The fee shall be paid to the Director General of Fair Trading.

(5) The fee shall be payable when Form N is submitted to the Director General of Fair Trading.

(6) The Director General of Fair Trading shall repay the whole of the fee to the applicant if:

(a) the Director returns the information submitted as Form N to the applicant under rule 5(6) above; or

(b) the Director determines the application by exercising his discretion not to give guidance or make a decision.

(7) A fee payable under this rule shall be treated as having been paid to the Director General of Fair Trading on the day on which the correct amount of the fee has been transferred to the bank account of the Office of Fair Trading.

#### **Notification of application to other parties**

7. Notification by an applicant under paragraph 2(2) of Schedule 5 or 6 shall be written and shall be given within seven working days from the date on which the applicant receives acknowledgement of receipt of his application by the Director General of Fair Trading; the applicant shall provide a copy of the notification to the Director General of Fair Trading without delay.

#### **Public register**

8.—(1) The Director General of Fair Trading shall maintain a register in which there shall be entered, in respect of every application made under section 14 or 22, a summary of the nature and objectives of the agreement or conduct which is the subject of the application (as referred to in Part 4 of Annex 1 hereto) and an indication of the final outcome of the application.

(2) The register shall be open to public inspection:

(a) at the Office of Fair Trading, between 10.00 a.m. and 4.30 p.m. on every working day; and

(b) on the Office of Fair Trading's website on the Internet.

#### **Provisional decision**

9.—(1) If the Director proposes to make a provisional decision he shall consult the applicant and those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be.

(2) If the Director makes a provisional decision he shall state, in the written notification of the decision to the applicant, the facts on which he bases the decision and his reasons for it.

(3) Subject to rule 25 below, if the Director makes a provisional decision he shall give written notice of it to those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be, stating the facts on which he bases the decision and his reasons for it.

#### **Giving guidance**

10.—(1) Where the Director gives guidance, he shall do so in writing to the applicant, stating the facts on which he bases the guidance and his reasons for it.

(2) Where the Director determines an application for guidance by exercising his discretion not to give guidance, he shall give written notice to the applicant of that fact and shall repay the whole of the fee in accordance with rule 6(6)(b) above.

### **Further action after guidance**

11. If, having given guidance of the kind referred to in section 15(1) or 23(1), the Director proposes to take further action under Part I, he shall consult the person to whom he gave the guidance.

### **Consultation of public following certain applications**

12.—(1) On an application under section 14 for an agreement to be examined:

- (a) if the Director proposes to grant an individual exemption, whether or not subject to conditions or obligations, he shall consult the public; and
- (b) if the Director proposes to make a decision that the Chapter I prohibition has not been infringed, he may consult the public.

(2) If, on an application under section 22 for conduct to be considered, the Director proposes to make a decision that the Chapter II prohibition has not been infringed, he may consult the public.

### **Investigations**

13.—(1) An officer shall grant a request of the occupier of premises entered by the officer (“the occupier”) to allow a reasonable time for the occupier’s legal adviser to arrive at the premises before the investigation continues, if the officer considers it reasonable in the circumstances to do so and if he is satisfied that such conditions as he considers it appropriate to impose in granting the occupier’s request are, or will be, complied with.

(2) For the purposes of paragraph (1) above, “a reasonable time” means such period of time as the officer considers is reasonable in the circumstances.

(3) A person required by the Director under section 26(6)(a)(ii) to provide an explanation of a document may be accompanied by a legal adviser.

### **Proposed infringement and conditional exemption decisions**

14.—(1) If the Director proposes to make a decision that the Chapter II prohibition or the Chapter I prohibition has been infringed he shall give written notice:

- (a) where an application has been made, to the applicant and, subject to rules 25 and 26 below, to those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be, which that Director considers has led to the infringement; and
- (b) where no application has been made, subject to rules 25 and 26 below, to each person who that Director considers is a party to the agreement, or is engaged in the conduct, as the case may be, which that Director considers has led to the infringement.

(2) If the Director proposes to grant an individual exemption subject to conditions or obligations, he shall give written notice to the applicant and, subject to rules 25 and 26 below, to those persons whom the applicant has identified in the application as being the other parties to the agreement to which the application relates.

(3) A written notice given under paragraph (1) or (2) above shall state the facts on which the Director relies, the matters to which he has taken objection, the action he proposes and his reasons for it.

(4) A written notice given under paragraph (1) or (2) above shall specify a period within which each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, may indicate to the Director any part of the information contained in the notice which he considers the Director would find to be confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 30 below.

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(5) Subject to paragraph (6) below, the Director shall give each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, a reasonable opportunity to inspect the documents in that Director's file relating to the proposed decision.

(6) The Director may withhold any document:

- (a) to the extent that it contains information which a person has stated to that Director to be, and which that Director has found to be, confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 30 below;
- (b) which is, in the opinion of that Director, otherwise confidential; or
- (c) which is internal, in the sense given to that word by sub-paragraph (1)(f) of rule 30 below.

(7) Subject to rules 25 and 26 below, the Director shall give each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, written notice of the period within which that person may make written representations to him on the information referred to in paragraph (3) above.

(8) The Director shall give each person referred to in sub-paragraph (1)(a) or (b) or paragraph (2) above, whichever is applicable, a reasonable opportunity to make oral representations to him on the information referred to in paragraph (3) above.

### **Notice of decision**

**15.**—(1) If the Director has made a decision as to whether or not an agreement has infringed the Chapter I prohibition, or as to whether or not conduct has infringed the Chapter II prohibition, he shall, without delay:

(a) give written notice of the decision:

- (i) where the decision was made following an application, to the applicant and, subject to rules 25 and 26(2) below, to those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be; and
- (ii) where no application has been made, subject to rules 25 and 26(2) below, to each person who that Director considers is a party to the agreement, or is engaged in the conduct, as the case may be,

stating in the decision the facts on which he bases it and his reasons for making it; and

(b) publish the decision.

(2) Where the Director determines an application for a decision by exercising his discretion not to give a decision, he shall:

(a) give written notice of that fact to:

- (i) the applicant; and
- (ii) subject to rules 25 and 26 below, those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be; and

(b) repay the whole of the fee in accordance with rule 6(6)(b) above.

### **Further action after a decision**

**16.** If, having made a decision that an agreement has not infringed the Chapter I prohibition, or that conduct has not infringed the Chapter II prohibition, the Director proposes to take further action under Part I, he shall:

(a) where the decision was made following an application, consult the applicant and, subject to rules 25 and 26 below, those persons whom the applicant has identified in the application as being the other parties to the agreement, or the other persons, if any, who are engaged in the conduct, as the case may be, which is the subject of the decision; and

(b) where no application has been made, subject to rules 25 and 26 below, consult each person who that Director considers is a party to the agreement, or is engaged in the conduct, as the case may be, which is the subject of the decision.

### **Directions and penalties**

**17.**—(1) Where the Director gives a direction to a person under section 32 or 33, he shall at the same time inform that person in writing of the facts on which he bases the direction and his reasons for giving it.

(2) Where the Director requires an undertaking to pay a penalty under section 36, he shall at the same time inform that undertaking in writing of the facts on which he bases the penalty and his reasons for requiring that undertaking to pay it.

(3) The Director shall publish directions given under section 32, 33 or 35.

### **Interim measures**

**18.**—(1) Subject to paragraph (2) below, if the Director proposes to give a direction under section 35, he shall give each person to whom he proposes to give the direction a reasonable opportunity to inspect the documents in that Director's file relating to the proposed direction.

(2) The Director may withhold any document:

(a) to the extent that it contains information which a person has stated to that Director to be, and which that Director has found to be, confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 30 below;

(b) which is, in the opinion of that Director, otherwise confidential; or

(c) which is internal, in the sense given to that word by sub-paragraph (1)(f) of rule 30 below.

(3) Where the Director gives a direction to a person under section 35, he shall at the same time inform that person in writing of the facts on which he bases the direction and his reasons for giving it.

### **Application for extension of individual exemption**

**19.**—(1) An application under section 4(6) for an extension of the period for which an individual exemption has effect shall consist of Form N, and the copies of Form N required under paragraph (4) below, and shall be submitted to the Director General of Fair Trading.

(2) If the Director proposes to grant the application, he shall consult the public.

(3) If the Director has made a decision as to whether or not to grant the application, he shall:

(a) give written notice of the decision to:

(i) the applicant; and

(ii) subject to rules 25 and 26(2) below, those persons whom the applicant has identified in the application as being the other parties to the agreement; and

(b) publish the decision,

stating in the decision the facts on which he bases it, his reasons for it and, if appropriate, the period of extension granted.

(4) Rules 2 (joint applications), 3 (copies), 4 (content of application), 5 (date of application) and 8 (public register) above shall apply to an application submitted under this rule as they apply, to the

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extent that they apply, to an application submitted under rule 1 above; rule 5(1) and (5) above shall also apply as if the parts in brackets were omitted from them.

### **Cancellation etc. of individual exemption**

**20.**—(1) If the Director proposes to take any of the steps mentioned in section 5(1), he shall consult the public, the person who applied for the exemption and, subject to rules 25 and 26 below, those persons whom that person identified in his application as being the other parties to the agreement to which the exemption relates.

(2) If the Director issues a notice in writing under section 5(1), he shall:

(a) give notice in writing of his decision to do so to:

(i) the person who applied for the exemption; and

(ii) subject to rules 25 and 26(2) below, those persons whom the person who applied for the exemption identified in his application as being the other parties to the agreement; and

(b) publish the decision,

stating in the decision the facts on which he bases it and his reasons for it.

### **Cancellation etc. of parallel exemption**

**21.**—(1) The circumstances in which the Director may exercise the powers in section 10(5) are where he finds that an agreement which benefits from a parallel exemption nevertheless has effects in the United Kingdom, or a part of it, which are incompatible with the conditions laid down in section 9.

(2) If the Director proposes to exercise any of the powers in section 10(5) he shall, subject to rules 25 and 26 below, consult each person who he considers is a party to the agreement, and he may consult the public.

(3) Subject to rules 25 and 26(2) below, if the Director has decided to exercise any of the powers in section 10(5), he shall give notice in writing of his decision to each person who he considers is a party to the agreement, stating in the decision the facts on which he bases it and his reasons for it, and he shall publish the decision.

(4) Subject to rules 25 and 26 below the Director shall exercise the powers in section 10(5) by giving notice in writing to each person who he considers is a party to the agreement.

### **Withdrawal of exclusions**

**22.**—(1) Subject to rules 25 and 26 below, if the Director proposes to give a direction under paragraph 4 of Schedule 1 or paragraph 2 or 9 of Schedule 3, or in accordance with an order made under section 50, to the effect that an exclusion made by a provision specified in paragraph (2) below does not apply to an agreement, he shall consult each person who he considers is a party to the agreement.

(2) The provisions specified for the purposes of paragraph (1) above are:

(a) paragraph 1 of Schedule 1 (mergers);

(b) paragraph 2(1) of Schedule 3 (section 21(2) agreements);

(c) paragraph 9(1) of Schedule 3 (agricultural products); and

(d) an order made under section 50 (vertical agreements and land agreements).



(3) The period specified for the purposes of paragraph 4(4) of Schedule 1 and paragraphs 2(6) and 9(6) of Schedule 3 is ten working days from the date on which the person in question receives notice in writing requiring him to give information to the Director.

(4) If the Director has given a direction referred to in paragraph (1) above, he shall publish it.

#### **Termination of transitional period**

**23.**—(1) Subject to rules 25 and 26 below, if the Director proposes to give a direction under paragraph 37 of Schedule 13, he shall consult each person who he considers is a party to the agreement.

(2) The period specified for the purposes of paragraph 38(2) of Schedule 13 is ten working days from the date on which the person in question receives the requirement in writing to give information to the Director.

(3) The Director shall publish a direction given under paragraph 37 of Schedule 13 after the date on which the direction takes effect; if the direction is revoked, he shall publish a notice of that fact.

#### **Application for extension of transitional period**

**24.**—(1) An application under paragraph 36 of Schedule 13 for the extension of transitional period shall:

- (a) be submitted in writing either to the Director General of Fair Trading or to a regulator who, in the applicant's opinion, has concurrent jurisdiction with the Director General of Fair Trading under paragraph 36 of Schedule 13 ("the appropriate Director");
- (b) comply with paragraph (2) below; and
- (c) include the documents specified in paragraph (3) below.

(2) An application submitted under paragraph (1) above shall:

- (a) be signed by the applicant or by a duly authorised representative of the applicant;
  - (b) contain an explanation of:
    - (i) the purpose of the agreement;
    - (ii) the basis for the applicant's belief that there is a transitional period;
    - (iii) the need for an extension of the transitional period; and
    - (iv) the likely application of the Chapter I prohibition to the agreement at the end of the transitional period, including any grounds for believing that an exemption from that prohibition is likely; and
  - (c) specify the length of the transitional period, the date of its expiry and the period of extension applied for.
- (3) The documents specified for the purposes of paragraph (1) above are the following:
- (a) two copies of the application;
  - (b) three copies of the agreement, each copy certified by the applicant to be a true copy of the original; and
  - (c) where the application is signed by a solicitor or other representative of an applicant, written proof of that representative's authority to act on that applicant's behalf.

(4) If either the Director General of Fair Trading or a regulator:

- (a) refuses an application submitted to him under paragraph (1) above; or
- (b) grants the application, or grants an extension which is of shorter duration than that applied for,

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he shall give written notice of his decision to the applicant not less than one month before the date of expiry of the transitional period, specifying, if appropriate, the period of extension granted.

(5) Where the appropriate Director finds that he does not have jurisdiction to determine an application submitted to him under paragraph (1) above, he shall without delay return it to the applicant.

(6) Subject to rules 25 and 26(2) below, if the Director General of Fair Trading or a regulator extends a transitional period on his own initiative, he shall give written notice of his decision to each person who he considers is a party to the agreement, specifying the period of extension granted.

(7) Rules 2 (joint applications), 4 (content of application) and 5(1) and (2) (date of application) above shall apply to an application under this rule with the following modifications:

- (a) Rule 2 shall apply as if the reference to “Form N” were a reference to “the application”, and as if the reference to “Director General of Fair Trading” were a reference to “appropriate Director”;
- (b) Rule 4 shall apply as if:
  - (i) the reference in paragraph (1) to “information submitted as Form N” were a reference to “application”;
  - (ii) the references in paragraph (2) to “Director” were references to “ appropriate Director”;
  - (iii) in paragraph (3) the reference to “Director General of Fair Trading ” were a reference to “appropriate Director”, the words “forming part of Form N” were replaced with the words “required by these rules for an application under paragraph 36 of Schedule 13”, and “the agreement, or the consideration of the conduct, which is the subject of” were omitted; and
  - (iv) sub-paragraphs (4)(a) and (b) were replaced with the words “the appropriate Director”; and
- (c) Rule 5(1) shall apply as if the words “Except where paragraph (3) below applies, an” were replaced with the word “The”, and the part in brackets were omitted, and as if in sub-paragraph (1)(a) the reference to “Form N ” were a reference to “the application” and the reference to “Director General of Fair Trading” were a reference to “appropriate Director”; rule 5(2) shall apply as if the reference to “Director General of Fair Trading ” were a reference to “appropriate Director”.

(8) If the Director General of Fair Trading or a regulator extends a transitional period, he shall publish a notice of that fact, specifying the period of extension granted.

### **Associations of undertakings**

**25.**—(1) Where a rule requires the Director to give written notice, or notice in writing, of any matter to an association of undertakings and the notice does not relate to an agreement or to conduct which is the subject of an application to that Director by that association, he shall give such notice to the director, secretary, manager or other similar officer of the association on its behalf.

(2) Where a rule requires the Director to give written notice, or notice in writing, of any matter to each of more than fifty members of an association of undertakings, he may, instead of giving such notice to any such member, give such notice to the director, secretary, manager or other similar officer of the association on that member’s behalf, provided that individual notice shall be given to any member who has made an application to that Director in respect of the agreement or the conduct to which the notice relates.

### **Time limits and giving notices**

26.—(1) Where it is not reasonably practicable for the Director to give:

- (a) written notice to a person:
  - (i) other than the applicant, under rule 14(1), (2) or (7) or rule 15(2)(a) above;
  - (ii) other than the applicant, in order to consult that person under rule 16 above;
  - (iii) other than the person who applied for the exemption and the public, in order to consult that person under rule 20(1) above; or
  - (iv) in order to consult that person under rule 21(2) (in the case of this rule, other than the public), 22(1) or 23(1) above, or rule 28(6) below; or
- (b) notice in writing to a person under rule 21(4) above,

in particular having regard to the number of persons to whom such notice is required to be given, he may, instead of so doing, take all the steps mentioned in paragraph (3) below.

(2) Where it is not reasonably practicable for the Director to give:

- (a) written notice of the decision to a person, other than the applicant, under rule 15(1)(a) or 19(3)(a) above;
- (b) written notice of his decision under rule 24(6) above;
- (c) written notice of his decision to a person, other than the applicant, under rule 28(7) below;
- (d) notice in writing of his decision to a person under rule 20(2)(a), in the case of this rule, other than the person who applied for the exemption, or 21(3) above; or
- (e) written notice in order to consult a third party under rule 30(3) below,

in particular having regard to the number of persons to whom such notice is required to be given, he may, instead of so doing, take all the steps mentioned in sub-paragraph (3)(b) below.

(3) The steps mentioned for the purposes of paragraphs (1) and (2) above are the following:

- (a) publish the notice by means of entry in the register maintained by the Director General of Fair Trading under rule 8 above; and
- (b) cause the notice to be published in:
  - (i) the London, Edinburgh and Belfast Gazettes;
  - (ii) at least one national daily newspaper; and
  - (iii) if there is in circulation an appropriate trade journal which is published at intervals not exceeding one month, in such trade journal.
- (4) Except where paragraph (1) or (2) above is invoked, where these rules allow or require written notice, or notice in writing, to be given to a person, such notice shall be treated as having been given on the date on which that person receives it.
- (5) Where paragraph (1) or (2) above is invoked, the notice shall be treated as having been given on the date of its publication in accordance with the paragraph invoked.
- (6) Where the time prescribed by these rules for doing any act expires on a day which is not a working day, the act is in time if done before 6 p.m. on the next following working day.
- (7) Where an act done in accordance with these rules is done on a day which is not a working day, or after 6 p.m. on a working day, the act shall be treated as done on the next following working day.

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### **Confidential third party information**

27.—(1) If a person gives information to the Director in connection with the exercise of any of the Director’s functions under Part I, or under paragraphs 36 or 37 of Schedule 13, in relation to an agreement to which that person is not a party, or in relation to conduct in which that person has not engaged, and that person considers that the Director would find any part of the information to be confidential, in the sense given to that word by sub-paragraph (1)(c) of rule 30 below, he shall set out that part of the information in a separate annex marked “confidential information” and provide a written explanation as to why he considers that the Director should treat it as such.

(2) The Director shall, if he proposes to disclose, in connection with the exercise of any of his functions under Part I, or under paragraph 36 or 37 of Schedule 13, any of the information contained in an annex provided in accordance with paragraph (1) above, give the person who provided the information:

- (a) written notice of his proposed action; and
- (b) a reasonable opportunity to make representations to him,

if it is reasonably practicable for him to do so.

### **Third party appeals**

28.—(1) An application under section 47(1) asking the Director to withdraw or vary a decision shall:

- (a) be submitted in writing to that Director within one month from the date of publication of that decision by means of entry in the register maintained by the Director General of Fair Trading under rule 8 above;
- (b) comply with paragraph (2) below; and
- (c) include the documents specified in paragraph (3) below.

(2) An application submitted under paragraph (1) above shall be signed by the applicant, or by a duly authorised representative of the applicant, and shall state the applicant’s reasons:

- (a) for considering that he has a sufficient interest in the decision referred to in paragraph (1) above; or
- (b) where he claims to represent persons who have a sufficient interest in that decision:
  - (i) for claiming that he represents those persons; and
  - (ii) for claiming that those persons have a sufficient interest in that decision.

(3) The documents specified for the purposes of paragraph (1) above are the following:

- (a) three copies of the application; and
- (b) where the application is signed by a solicitor or other representative of an applicant, written proof of that representative’s authority to act on that applicant’s behalf.

(4) The application is made on the date on which it is received by the Director to whom the appeal is made; that Director shall acknowledge receipt of the application by giving notice in writing to the applicant without delay.

(5) Where the applicant knows of material changes in the information contained in the application he shall without delay communicate those changes to the Director to whom the application is made.

(6) If the Director proposes to grant the application, he shall, subject to rules 25 and 26 above, consult all persons whom he was required by these rules to notify of the decision referred to in paragraph (1) above.

(7) If the Director grants the application, he shall give written notice of his decision to the applicant, and, subject to rules 25 and 26(2) above, to all persons whom he was required by these

rules to notify of the decision referred to in paragraph (1) above, stating in his decision the facts on which he bases it and his reasons for it, and he shall publish his decision.

### **Modification of rules for notification of excluded agreements**

**29.** These rules shall apply, with the following modifications, to an application made under section 13 or 14 as modified by regulations made under section 12(3) and paragraph 19(3) of Schedule 13 (notification of excluded agreements):

(a) rule 14 shall apply with the insertion in paragraph (1) after the word “infringed” of: “, or that the Chapter I prohibition would be infringed if it applied to the agreement,” and with the insertion in sub-paragraph (1)(a) after the words “has led” of: “or, in the case of an agreement which would infringe the Chapter I prohibition if it applied to the agreement, would lead,”;

(b) rule 15 shall apply with the insertion in paragraph (1) after the words “Chapter I prohibition” of: “, or as to whether or not the Chapter I prohibition would be infringed if it applied to the agreement”; and

(c) rule 16 shall apply with the insertion after the words “Chapter I prohibition ” of: “, or would not do so if the Chapter I prohibition applied to the agreement”.

### **Interpretation and supplemental**

**30.—(1)** In these rules:—

- (a) “agreement” shall be construed by reference to section 2(5);
- (b) “applicant” means:
  - (i) in rules 2, 3(2) and (3), 4(2) and (3), 5(2), (3), (4) and (6), 6(1), (3) and (6), 7, 24(1) to (3), and 28(2) and (3)(b) above, person who is making the application; and
  - (ii) in rules 4(4), 9, 10, 14, 15, 16, 19(3)(a), 24(4) and (5), and 28(4), (5) and (7) above, person who has made the application;
- (c) information is confidential if it is:
  - (i) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the undertaking to which it relates; or
  - (ii) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm his interests;
- (d) “the Director” means the Director General of Fair Trading or a regulator who has concurrent jurisdiction to exercise the functions of the Director General of Fair Trading under Part I;
- (e) “Form N” means, subject to rule 4(3) above:
  - (i) the information, including any supporting document, required by Annex 1 hereto; and
  - (ii) the declaration made in the form set out in Part 2A of Annex 1 hereto;
- (f) “internal” document includes the following:
  - (i) a document produced within the office of either the Director General of Fair Trading or a regulator concerning a case;
  - (ii) correspondence between the Director General of Fair Trading and a regulator, or between regulators, concerning a case; and
  - (iii) correspondence between the Director General of Fair Trading, or a regulator, and a government department or another competition authority, concerning a case;

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- (g) “an officer” means an investigating officer within the meaning of section 27(1) or a named officer of the Director authorised by a warrant issued under section 28;
  - (h) “regulator” has the meaning given to it by section 54; and
  - (i) “working day” means day which is not Saturday, Sunday or any other day on which the Office of Fair Trading is closed for business.
- (2) Where the Director, if he proposes to take action, is required to consult a person, he shall:
- (a) except where otherwise indicated, give written notice to that person; and
  - (b) state in that notice the action he proposes, his reasons for it and the period within which that person may make written representations to him on these matters.
- (3) Where the Director, if he proposes to take action:
- (a) is required to consult the public; or
  - (b) proposes to consult the public in exercise of his discretion to do so,
- he shall publish a notice stating the action he proposes, his reasons for it and the period within which written representations may be made to him on these matters, and shall, subject to rules 25 and 26(2) above, consult any third party, within the meaning of paragraph 12(2) of Schedule 9, who appears to him likely to be affected by the action he proposes.
- (4) Where the Director is required to publish a decision, a proposal or any other information, he shall do so by means of entry in the register maintained by the Director General of Fair Trading under rule 8 above.
- (5) References in these rules to numbered Parts, sections, Schedules or paragraphs are, unless the contrary intention appears, to the Parts, sections, Schedules or paragraphs so numbered in the Competition Act 1998.

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## **Annex 1**

### **FORM NINFORMATION REQUIRED FOR APPLICATIONS FOR GUIDANCE OR A DECISION UNDER CHAPTERS I AND II OF THE COMPETITION ACT 1998**

#### **PART 1: INTRODUCTION**

This document lists the information and supporting documents which must be provided when making an application for guidance under section 13 or 21 or an application for a decision under section 14 or 22.

If the Applicant(s) considers that the Director would find any part of the information contained in the application to be confidential, in the sense given to that word by rule 30(1), he must set out that part of the information in a separate annex to the application marked "confidential information" and provide a written explanation as to why he considers that the Director should treat it as such.

This document must also be used when making an application under section 4(6) (see rule 19).

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**PART 2: INFORMATION TO BE PROVIDED BY THE UNDERTAKING(S) MAKING THE APPLICATION**

**1. INFORMATION ABOUT THE UNDERTAKING(S) SUBMITTING THE APPLICATION (THE "APPLICANT(S)") AND THE OTHER PARTIES TO THE AGREEMENT**

- 1.1 Please give the full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available) of the Applicant(s) and a brief description of the nature of its business. If the Applicant(s) is a partnership, sole trader or other unincorporated body trading under a business name, give the name(s) and address(es) of the partners or proprietor(s). Please quote any reference which should be used.
- 1.2 Please give the full name, address, telephone and fax numbers and e-mail address (where available) of any representative(s) who has been authorised to act for the Applicant(s), indicating whom they represent and in what capacity (e.g. a solicitor).
- 1.3 Where the declaration to be made in the form set out in Part 2A is signed by a solicitor or other representative of the Applicant(s), please provide written proof of that representative's authority to act on the Applicant(s)'s behalf.
- 1.4 If a joint application is being submitted, indicate whether or not a joint representative has been appointed. If a joint representative has been appointed, give his full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and e-mail address (where available), and indicate whom he represents.
- 1.5 Please provide the Standard Industrial Classification code (as listed in the United Kingdom Standard Industrial Classification of Economic Activities 1992, produced by the Office for National Statistics and published by The Stationery Office in 1997 with ISBN code 011620923-2 (to supersede the 1992 edition)) for the goods or services to which the agreement or conduct that is the subject of the application relates, if the code is known. If the code is not known, describe the goods or services involved as fully and accurately as possible.
- 1.6 Please give the full names, addresses (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers, nature of business, and brief description of the other parties to the agreement and any other persons engaging in the conduct which is the subject of the application, together with the name of a contact at each undertaking concerned, their address, telephone and fax numbers and details of their position in the undertaking.
- 1.7 Please provide details of the steps taken or to be taken to notify all the other parties to the agreement or conduct which is the subject of the application of whom the Applicant(s) is aware that the application is being submitted. Indicate whether those parties have received a copy of the application and if so, whether confidential information (as defined in rule 30(1)) was included in the copy of the application. If the Applicant(s) considers that it is not practicable to notify the other parties of the application, please give the reasons why it is not practicable.
- 1.8 Please identify the groups to which each party to the agreement or conduct which is the subject of the application belongs. For the purposes of the information required by this form, a group relationship exists where one undertaking—
  - owns more than half the capital or business assets of another undertaking; or
  - has the power to exercise more than half the voting rights in another undertaking; or
  - has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking; or
  - has the right to manage the affairs of another undertaking.

An undertaking which is jointly controlled by several other undertakings (e.g. a joint venture) forms part of the group of each of these undertakings.

**2. PURPOSE OF THE APPLICATION**

- 2.1 Specify whether the application is being made in relation to the Chapter I prohibition, the Chapter II prohibition or both.



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- 2.2 Specify whether the application is for guidance or a decision.
- 2.3 If the application is for a decision in relation to the Chapter I prohibition and an individual exemption is sought (see further 9 below), specify the date from which the exemption is required to have effect, giving reasons.
- 2.4 State which provisions or effects of the agreement or conduct which is the subject of the application might in the Applicant's view raise questions of compatibility with the Chapter I prohibition and/or the Chapter II prohibition, and give reasons for that view.
- 2.5 If the application is for an extension of an individual exemption, state the date of expiry of the existing exemption and the reasons why an extension is sought. Please also give details of any changes that have occurred in the relevant market(s) (see 6.2 and 6.3 below) and in the agreement itself since the grant of the exemption. Specify how any such changes impact on the fulfillment by the agreement of the conditions set out in section 9 of the Act. Please also enclose a copy of the decision letter granting the exemption.
- 2.6 If the agreement which is the subject of the application is considered to qualify for an exemption (other than an individual exemption), specify the exemption and give reasons why the Applicant(s) is unsure whether the agreement is covered by the exemption and why the application is considered appropriate.
- 2.7 If the agreement or conduct which is the subject of the application is considered to benefit from any exclusion from the Chapter I prohibition and/or Chapter II prohibition, specify the exclusion and give reasons why the Applicant(s) is unsure whether the agreement or conduct is covered by the exclusion and why the application is considered appropriate.

### 3. JURISDICTION

- 3.1 Please state whether the Applicant(s) considers that the agreement or conduct which is the subject of the application may affect trade between Member States of the European Community.
- 3.2 Please state whether the agreement or conduct which is the subject of the application has been notified to the European Commission under Regulation 17(a). If so, it would assist consideration of the application if a copy of the completed Form A/B (including supporting documents) and, if appropriate, of any decision or comfort letter received from the European Commission were provided to the DGFT.
- 3.3 Please state whether the agreement relates to transport by rail, road, inland waterway or to services ancillary to transport and is the subject of a notification to the European Commission under Regulation 1017/68(b). If so, it would assist consideration of the application if a copy of the completed Form II (including supporting documents) and, if appropriate, of any decision or comfort letter received from the European Commission, were provided to the DGFT.
- 3.4 Please state whether the agreement or conduct which is the subject of the application is also the subject of an application to any national competition authority outside the United Kingdom. If so, please provide brief details (where applicable) of the outcome of such application, if known.
- 3.5 Please provide details of any previous contacts of which the Applicant(s) is aware with the Office of Fair Trading or a regulator relating to the agreement or conduct which is the subject of the application.
- 3.6 Please state whether, in the Applicant(s) opinion, a regulator, or more than one regulator, has or may have concurrent jurisdiction with the DGFT to deal with the application. If so, please identify the relevant regulator(s).

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(a) O.J. L13, 21.2.62, p204 (S edn, 1959-62, p87) (as amended).

(b) O.J. L62, 29.11.62, p2751 (S edn, 1959-62, p291) (as amended).

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4. *DETAILS OF THE AGREEMENT OR CONDUCT*

- 4.1 Please provide a brief description of the agreement or conduct which is the subject of the application (including the nature, content, purpose, date(s) and duration).
- 4.2 If the application is made in relation to a written agreement, attach either an original of the most recent text of that agreement, or a copy certified by the applicant to be a true copy of the original. If the application is made in relation to an agreement which is not written, provide a full description of the agreement. If the application is made in relation to conduct, provide a full description of that conduct.
- 4.3 Identify any provisions in the agreement or aspects of the conduct which may restrict the parties in their freedom to take independent commercial decisions or to act on those decisions.
- 4.4 If the application relates to standard form terms and conditions, indicate the number of agreements expected to be entered into on those terms and conditions.

5. *INFORMATION ON THE PARTIES TO THE AGREEMENT OR CONDUCT AND THE GROUPS TO WHICH THEY BELONG*

- 5.1 Please give the applicable turnover in the last business year of each party to the agreement or conduct which is the subject of the application and the consolidated applicable turnover for the group (within the meaning of 1.8 above) to which each party belongs. For the purposes of this form, "applicable turnover" and "business year" shall have the meaning given to them in an Order made pursuant to section 36(8). Please attach one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings.
- 5.2 Please list the product and/or services market(s) in which each party to the agreement or conduct and each member of the groups (within the meaning of 1.8 above) to which they belong are active.

6. *THE RELEVANT PRODUCT AND GEOGRAPHIC MARKET(S)*

- 6.1 A "relevant product market" comprises all those products and/or services regarded by the consumer of the products or acquirer of the services as interchangeable or substitutable by reason of the products' characteristics, price and intended use. The "relevant geographic market" comprises the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.
- 6.2 Please supply and explain the definition of the relevant product market(s) which in the Applicant(s)'s opinion should form the basis of the analysis of the application. State the specific products or services directly or indirectly affected by the agreement or conduct which is the subject of the application and other goods or services that may be viewed as substitutable. Give reasons for all assumptions or findings.
- 6.3 Please supply and explain the definition of the relevant geographic market(s) which in the Applicant(s)'s opinion should form the basis of the analysis of the application. Please identify the geographic scope of the relevant market(s), with reasons. Give reasons for all assumptions or findings.
- 6.4 For each of the relevant product and geographic market(s) identified in 6.2 and 6.3 above, give details of:
  - a the level of concentration in the markets;
  - b the nature and extent of vertical integration;
  - c the direction and extent of trade within the UK and/or between the UK and abroad;
  - d the prevailing methods of distributing goods and services, including the extent of the involvement of undertakings which are not party to the agreement or conduct which is the subject of the application (i.e. third parties), and their significance;

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- e the prevailing service networks (for example for repair and maintenance), including the extent to which these services are provided by third parties;
- f the significance of customer preferences, in terms of brand loyalty, product differentiation and the provision of a full range of products;
- g the categories and relative strengths of different types of customer, including private and public sector purchasers; and
- h the extent to which customers have long-term relationships with suppliers.

Where available, please provide a copy of the most recent long-term market studies (produced by the Applicant(s) in-house or commissioned by the Applicant(s) from outside consultants) which assess and/or analyse the relevant product market(s) and/or the relevant geographic market(s). Please supply references to any external published studies of the relevant product market(s) and/or the relevant geographic market(s) or, where available, please supply a copy of each such study with the application.

- 6.5 For each of the parties to the agreement or conduct which is the subject of the application, provide a list of all undertakings belonging to the same group (within the meaning of 1.8 above) which are active in the relevant product market(s) identified in 6.2 above, and those active in markets neighbouring the relevant product market(s)—that is, active in products and/or services which are regarded by the consumer as imperfect and partial substitutes for those products and/or included in the relevant product market(s) as defined in 6.2 above. Such undertakings must be identified even if they sell the product or service in question in geographic areas other than those in which the parties to the agreement or conduct which is the subject of the application operate. Please list the name, place of incorporation, exact product manufactured and the geographic scope of operation of each member of the group.

## 7. THE POSITION OF THE UNDERTAKINGS IN THE RELEVANT PRODUCT MARKET(S)

- 7.1 Please provide the following information in respect of each of the previous three calendar or financial years, as available:
- a the Applicant(s)'s best estimates of the market shares of each party to the agreement or conduct which is the subject of the application, in the goods or services in the relevant product market(s) on the relevant geographic market(s), as identified in 6.2 and 6.3 above, and, if different, in the UK, and in the European Community;
  - b identify the five main competitors of each party to the agreement or conduct which is the subject of the application in the relevant product and geographic market(s), and give the Applicant(s)'s best estimates of their market shares in the goods or services in the relevant product and geographic market(s); provided each competitor's name, address, telephone and fax numbers, and, where possible, a contact name;
  - c identify the five main customers of each party to the agreement or conduct which is the subject of the application, in the relevant product and geographic market(s), giving the customer's name, address, telephone and fax numbers, and, where possible, a contact name; and
  - d details of each party to the agreement or conduct's interests in, and agreements with, any other undertakings competing in the relevant product and geographic market(s), together with the Applicant(s)'s best estimates of those other undertakings' market shares in the goods or services in the relevant product and geographic market(s), if known.

Information requested in this section must be provided for the group to which each party to the agreement or conduct which is the subject of the application belongs (within the meaning of 1.8 above) and not in relation to the individual undertakings which are party to the agreement or conduct which is the subject of the application.

Justification for the figures provided in response to the above must be given. Thus, for each answer to (a), (b) and (d), total market value or volume must be stated, together with the sales or turnover of each of the undertakings in question. The source or sources

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of the information should also be given and one copy should be provided of any document, where available, from which information has been taken.

8. *MARKET ENTRY AND POTENTIAL COMPETITION IN THE RELEVANT PRODUCT AND GEOGRAPHIC MARKET(S)*

8.1 For each of the relevant product and geographic market(s) identified in 6.2 and 6.3 above, describe:

a the factors influencing entry in product terms into the relevant product market (s); that is, the barriers which exist to prevent undertakings not presently manufacturing goods or providing services within the relevant product market (s) from entering the market(s), taking account of, in particular but not exclusively, the extent to which:

- entry is influenced by the requirements of government authorisation or standard-setting, in any form, and any legal or regulatory controls on entry to the market(s);
- entry is influenced by the availability of raw materials;
- entry is influenced by the length of contracts between an undertaking and its suppliers and customers; and
- research and development and licensing patents, know-how and other intellectual property rights are important; and

b the factors influencing entry in geographic terms into the relevant geographic market(s); that is, the barriers which exist to prevent undertakings already manufacturing and/or marketing goods or providing services within the relevant product market(s) outside the relevant geographic market(s) from extending sales into the relevant geographic market(s), taking account of, in particular but not exclusively, the importance of:

- trade barriers imposed by law, such as tariffs, quotas etc;
- local specifications or technical requirements;
- procurement policies;
- the existence of adequate and available local distribution and retailing facilities;
- transport costs; and
- strong consumer preference for local brands or products.

8.2 Estimate the amount of time required for entry into the relevant product and geographic market(s), taking account of the individual barriers to entry referred to in the answer to 8.1 above.

8.3 State whether any new undertakings have entered the relevant product market(s) in geographic areas where the parties to the agreement or conduct which is the subject of the application sell, during the last three years. Identify these undertakings by full name, address (by registered office, where appropriate, and principal place of business, if different), telephone and fax numbers and, where possible, a contact name. Please give the Applicant(s)'s best estimates of the market shares of each such undertaking in the goods or services in the relevant product and geographic market(s).

9. *EXEMPTION*

If exemption from the Chapter I prohibition is sought, or guidance on the likelihood of exemption from the Chapter I prohibition is sought, explain how the agreement contributes to improving production or distribution and/or promoting technical or economic progress, and how consumers will be allowed a fair share of the resulting benefit. Explain how each restriction imposed by the agreement is indispensable to the attainment of those objectives, and how the agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question (as identified in 6.2 and 6.3 above).

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**10. TRANSITIONAL PERIODS**

If the Applicant(s) considers that the agreement benefits from any transitional periods (during which the Chapter I prohibition does not apply), indicate the duration of the relevant transitional periods by reference to Schedule 13.

**11. OTHER INFORMATION:**

- 11.1 Where the application is for a decision under section 14 or 22, please provide details of trade publications in which advertisements seeking the views of third parties might be placed.
- 11.2 Please give any other information which the Applicant(s) considers may be helpful.
- 11.3 Please specify how the fee payable under rule 6 has been paid and complete the details on the relevant payment slip at Part 5 of this form.

**12. SUPPORTING DOCUMENTS**

Please ensure that the Applicant(s) has attached the following documents (where relevant) to the application:

- (a) if 1.3 above applies, written proof of the representative's authority to act on the Applicant(s) behalf;
- (b) if 2.5 above applies, a copy of the decision letter granting the exemption;
- (c) if 3.2 above applies, a copy of Form A/B (including supporting documents) and, if appropriate, of any decision or comfort letter;
- (d) if 3.3 above applies, a copy of Form II (including supporting documents) and, if appropriate, of any decision or comfort letter;
- (e) if 4.2 above applies with regard to a written agreement, either an original or certified copy, of the most recent version of the text of the agreement which is the subject of the application;
- (f) one copy of the most recent annual report and accounts (or equivalent for unincorporated bodies) for each party to the agreement or conduct and of the most recent annual report and accounts for the ultimate parent company of these undertakings (see 5.1 above);
- (g) where available, one copy of the most recent long-term market studies which assess and/or analyse the relevant market(s) (in-house studies produced by the Applicant(s) or commissioned by the Applicant(s) from outside consultants) (see 6.4 above);
- (h) where available, one copy of any external studies of the relevant product and/or the relevant geographic market(s) (see 6.4 above); and
- (i) where available, one copy of any document from which information has been taken and provided in answer to 7.1 above.

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**Part 2A:**

**Under section 44 of the Act, it is an offence, punishable by a fine or imprisonment or both, to provide information which is false or misleading in a material particular if the undertaking or person providing it knows that it is false or misleading, or is reckless as to whether it is. If the undertaking or person is a body corporate, under section 72 of the Act its officers may be guilty of an offence**

**DECLARATION**

The undersigned declare that all the information given above and in the . . . pages annexed hereto is correct to the best of their knowledge and belief, and that all estimates are identified as such and are their best estimates of the underlying facts.

Place and date .....

Signatures .....

Status .....

..... name(s) in block capitals

**PART 3: ACKNOWLEDGEMENT OF RECEIPT**

This acknowledgement of receipt will be returned to the address inserted below if the Applicant(s) provides the information requested below.

To be completed by the Applicant(s)

To: ..... (name and address of Applicant(s))

The application dated .....

concerning .....  
involving the following undertakings:

1. ....
2. .... [and others]

To be completed by the Office of Fair Trading

was received on .....

and registered under reference number

.....

**Please quote this number in all correspondence with the Office of Fair Trading or the office of a regulator.**

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**PART 4—TO BE COMPLETED BY THE APPLICANT(S)**

**Information for the OFT public register**

1. Please give the full names of the parties to the agreement(s) or conduct which is the subject of the application, as in the response to 1.1 and 1.6 above.
2. Please provide a short summary which does not contain any confidential information (no more than 250 words) of the nature and objectives of the agreement(s) or conduct which is the subject of the application.
3. Please identify the Standard Industrial Classification code (as referred to in 1.5 above) for the relevant good(s) or service(s), if known. If the code is not known, describe the goods or services involved as fully and accurately as possible.

**PART 5: PAYMENT DETAILS FOR FEES PAYABLE UNDER RULE 6**

**For payment by cheque**

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Co-ordination Unit  
Office of Fair Trading  
Fleetbank House  
2–6 Salisbury Square  
London EC4Y 8JX

I enclose cheque no ..... for the amount of ..... made payable to “The Office of Fair Trading”.

Name (Block Letters):

.....

Address (Block Letters):

.....

.....

.....

.....

Signature .....

Date .....

---





## **Annex 2**

### **Part 1**

The amount specified for the purposes of rule 6(2)(a) above is £5,000.

### **Part 2**

The amount specified for the purposes of rule 6(2)(b) above is £13,000.