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STATUTORY INSTRUMENTS

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**2019 No. 1245**

The Competition (Amendment etc.)  
(EU Exit) (No. 2) Regulations 2019

PART 2

Amendment of Part 2 of the 2019 Regulations:  
amendment of the Competition Act 1998

2. Part 2 of the 2019 Regulations is amended as follows.

3. After regulation 8, insert—

“**8A.** After section 31F(1) insert—

*“Retained EU anti-trust commitments*

**31G Retained EU anti-trust commitments**

(1) Retained EU anti-trust commitments are to be treated for the purposes of this Part as accepted by the CMA.

(2) In this Part—

“the 2019 Regulations” means the Competition (Amendment etc.)(EU Exit) Regulations 2019;

“relevant retained decision” means an EU decision falling within paragraph 2(1)(c) or (e) of Schedule 3 to the 2019 Regulations;

“retained EU anti-trust commitment” means a commitment which is comprised in a relevant retained decision, except a commitment which is revoked by paragraph 2A of Schedule 3 to the 2019 Regulations, and includes—

(a) any other provision contained in the relevant retained decision if, or to the extent that, it relates to the commitment, and

(b) any decisions or approvals if, or to the extent that, they are made under, or relate to, the commitment;

and in paragraph (a) “other provision” includes obligations or conditions, procedural provision, and enforcement provision.

(3) References in this Part to a retained EU anti-trust commitment include a commitment which has been substituted in accordance with section 31I(1)(b).

**31H Effect of retained EU anti-trust commitments**

(1) Subsection (2) applies if a retained EU anti-trust commitment is in force and has not been released by the CMA.

- (2) In such a case, the CMA must not—
- (a) begin an investigation under section 25,
  - (b) make a decision (within the meaning of section 31(2)), or
  - (c) give a direction under section 35,

in relation to the agreement or conduct to which the retained EU anti-trust commitment relates (but this subsection is subject to subsections (3), (4) and (5)).

(3) Nothing in subsection (2) prevents the CMA from taking any action in relation to competition concerns which are not addressed by retained EU anti-trust commitments accepted by it.

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

- (a) it has reasonable grounds for believing that there has been a material change of circumstances since the relevant retained decision comprising the retained EU anti-trust commitment was made,
- (b) it has reasonable grounds for suspecting that a person has failed to adhere to one or more of the terms of the retained EU anti-trust commitment, or
- (c) it has reasonable grounds for suspecting that information which led to the making of the relevant retained decision comprising the retained EU anti-trust commitment was incomplete, false or misleading in a material particular.

(5) Subsection (2)(a) does not prevent the CMA from beginning an investigation where it has reasonable grounds to suspect that competition concerns will arise on expiry of the retained EU anti-trust commitment.

- (6) If, pursuant to subsection (4), the CMA begins an investigation and—
- (a) makes a decision, or
  - (b) gives a direction,

the retained EU anti-trust commitment is to be treated as released from the date of that decision or direction.

(7) Nothing in this section affects any investigation under section 25 begun by the CMA before exit day.

**31I Variation, substitution or release of retained EU anti-trust commitments**

(1) At any time when retained EU anti-trust commitments are in force the CMA may accept from the person (or persons) who gave the commitments—

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

- (2) Retained EU anti-trust commitments may be released by the CMA where—
- (a) it is requested to do so by the person (or persons) who gave the commitments; or

(b) it has reasonable grounds for believing the commitments are no longer necessary.

(3) The provisions of Schedule 6A to this Act have effect with respect to procedural requirements for the variation and release of, and acceptance of commitments in substitution for, retained EU anti-trust commitments under this section.

### **31J Review of retained EU anti-trust commitments**

(1) Where the CMA is reviewing or has reviewed the effectiveness of retained EU anti-trust commitments it must, if requested to do so by the Secretary of State, prepare a report of its findings.

(2) The CMA must—

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

### **31K Enforcement of retained EU anti-trust commitments**

(1) If a person from whom the CMA has accepted retained EU anti-trust commitments fails without reasonable excuse to adhere to the terms of the commitments (and has not been released from them), the CMA may apply to the court for an order—

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

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

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

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

### **31L Information relating to retained EU anti-trust commitments**

(1) For the purposes of considering whether a retained EU anti-trust commitment should be varied, substituted or released in accordance with section 31I, the CMA may require the person who gave the commitment to produce to it a specified document, or to provide it with specified information which it considers relates to any matter relevant to the consideration.

(2) The power conferred by subsection (1) is to be exercised by a notice in writing.

(3) A notice under subsection (2) must indicate the subject matter and purpose of the consideration.

(4) In subsection (1) “specified” means—

- (a) specified, or described, in the notice; or

- (b) falling within a category which is specified, or described, in the notice.
- (5) The CMA may also specify in the notice—
  - (a) the time and place at which any document is to be produced or any information is to be provided;
  - (b) the manner and form in which it is to be produced or provided.
- (6) The power under this section to require a person to produce a document includes power—
  - (a) if the document is produced—
    - (i) to take copies of it or extracts from it;
    - (ii) to require that person, or any person who is a present or past officer of, or is or was at any time employed by, that person, to provide an explanation of the document;
  - (b) if the document is not produced, to require that person to state, to the best of their knowledge and belief, where it is.”.”.
- 4. After regulation 13, insert—
 

“**13A.** In section 40A(1)(2), for “28 or 28A” substitute “28, 28A or 31L”.”.
- 5. In regulation 14, after paragraph (c), insert—
 

“(d) after paragraph (h) insert—

“(ha) not releasing retained EU anti-trust commitments pursuant to a request made under section 31I(2)(a),

(hb) releasing retained EU anti-trust commitments under section 31I(2)(b),” .”.
- 6. For regulation 15, substitute—
 

“**15.** In section 47(1)(3)—

  - (a) in paragraph (a), for “paragraphs (a) to (f)” substitute “paragraph (a), (c), or (e)”;
  - (b) after paragraph (c), insert—
 

“(ca) a decision of the CMA to release retained EU anti-trust commitments under section 31I, or to accept a variation or substitution of such retained EU anti-trust commitments other than a variation which is not material in any respect;”.”.
- 7. After regulation 29 insert—
 

“**29A.**—(1) Schedule 6A(4) is amended as follows.

  - (2) After paragraph 1, insert—
 

“**1A.** Paragraph 2 also applies where the CMA proposes to accept any variation or substitution of retained EU anti-trust commitments under section 31I, other than a variation which is not material in any respect.”.
  - (3) In paragraph 7, after “under section 31A”, insert “, or a variation under section 31I,”
  - (4) After paragraph 14 insert—

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(2) Section 40A was inserted by section 40(2) of the Enterprise and Regulatory Reform Act 2013 (c. 24)

(3) Section 47(1) was first substituted by section 17 of the Enterprise Act 2002 (c. 40), further substituted by S.I. 2004/1261, and subsequently amended by paragraphs 1 and 27 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013,

(4) Schedule 6A was inserted by regulation 4 of, and paragraph 52 of Schedule 1 to, S.I. 2004/1261 and subsequently amended by section 26(3) and paragraphs 1 and 56 in Part 1 of Schedule 5 to the Enterprise and Regulatory Reform Act 2013.

### “PART 3

#### PROCEDURAL REQUIREMENTS FOR THE RELEASE OF RETAINED EU ANTI-TRUST COMMITMENTS

**15.** Paragraph 16 applies where the CMA proposes to release any retained EU anti-trust commitments under section 31I.

**16.—**(1) Before releasing the commitments, the CMA must—

- (a) give notice under this paragraph;
- (b) send a copy of the notice to the person (or persons) who gave the retained EU anti-trust commitments; and
- (c) consider any representations made in accordance with the notice and not withdrawn.

(2) A notice under this paragraph must state—

- (a) the fact that a release is proposed;
- (b) the reasons for it; and
- (c) the period within which the representations may be made in relation to the proposed release.

(3) The period stated for the purposes of sub-paragraph (2)(c) must be at least 11 working days starting with the date the notice is given or, if that date is not a working day, with the date of the first working day after that date.

**17.** If after giving notice under paragraph 16 the CMA decides not to proceed with the release, it must—

- (a) give notice that it has so decided; and
- (b) send a copy of the notice to the person (or persons) who gave the retained EU anti-trust commitments.

**18.** As soon as practicable after releasing the retained EU anti-trust commitments, the CMA must—

- (a) publish the release in such manner as it considers appropriate; and
- (b) send a copy of the release to the person (or persons) who gave the retained EU anti-trust commitments.

**19.** A notice under paragraph 16 or 17 must be given by—

- (a) sending a copy of the notice to such other person or persons as the CMA considers appropriate for the purpose of bringing the matter to the attention of those likely to be affected by it; or
- (b) publishing the notice in such manner as the CMA considers appropriate for the purpose of bringing the matter to which it relates to the attention of those likely to be affected by it.”.”.