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STATUTORY INSTRUMENTS

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**2020 No. 370**

**COMPETITION**

**The Competition Act 1998 (Solent Maritime Crossings)  
(Coronavirus) (Public Policy Exclusion) Order 2020**

*Made* - - - - *at 1.00 p.m. on 27th*  
*March 2020*  
*Laid before Parliament* *at 2.45 p.m. on 27th*  
*March 2020*  
*Coming into force in accordance with article 1*

The Secretary of State, in exercise of the powers conferred by section 71(3) of, and paragraph 7(1), (2) and (3) of Schedule 3 to, the Competition Act 1998<sup>(1)</sup>, makes the following Order.

The Secretary of State is satisfied that there are exceptional and compelling reasons of public policy why the prohibition contained in Chapter I of the Competition Act 1998 ought not to apply to, or ought to be deemed never to have applied in relation to, agreements of the descriptions specified in this Order.

**Citation and commencement**

1. This order may be cited as the Competition Act 1998 (Solent Maritime Crossings) (Coronavirus) (Public Policy Exclusion) Order 2020 and comes into force on the day after the day on which it is laid before Parliament.

**Interpretation**

2. In this Order—

“coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

“the crossings disruption period” means the period commencing on 16th March 2020 and ending on the date specified in the notice published by the Secretary of State in accordance with article 5(1) as the date on which the crossings disruption period is to end;

“facilities” includes premises, moorings and marine equipment;

“qualifying activities” has the meaning given in article 3;

“Solent crossing” means a maritime route between any port situated on the Isle of Wight and any port situated in the county of Hampshire or the non-metropolitan districts of Portsmouth or Southampton;

“Solent crossing maritime operator” means—

- (a) Hovertravel Limited (registered company number 830401);
- (b) Red Funnel Limited (registered company number 10823670);
- (c) Southampton Isle of Wight and South of England Royal Mail Steam Packet Company Limited (registered company number 00002404);
- (d) Wightlink Limited (registered company number 1059267); and
- (e) Wightlink (Guernsey) Limited (registered company number FC025041).

### **Qualifying activities**

**3.—**(1) For the purposes of this Order, a qualifying activity is any activity specified in paragraph (2) insofar as it—

- (a) is for the purpose referred to in article 4(2)(a); and
  - (b) does not involve the sharing between Solent crossing maritime operators of any information regarding costs or pricing.
- (2) The activities specified in this paragraph are—
- (a) coordination as regards timetables to be operated during the crossings disruption period;
  - (b) coordination regarding the routes to be operated by any Solent crossing maritime operator during the crossings disruption period; and
  - (c) coordination on the sharing of labour or facilities during the crossings disruption period.

### **Exclusion from the Chapter I prohibition**

**4.—**(1) The prohibition contained in Chapter I of the Competition Act 1998 does not apply to an agreement<sup>(2)</sup> which—

- (a) is between two or more Solent crossing maritime operators;
  - (b) relates to a qualifying activity;
  - (c) is notified to the Secretary of State in accordance with article 6;
  - (d) meets the conditions set out in paragraph (2).
- (2) The conditions referred to in paragraph (1)(d) are—
- (a) the purpose of the agreement is to prevent or mitigate disruption to the provision of Solent crossings caused by a reason relating to coronavirus; and
  - (b) the agreement does not have as its object or effect the prevention, restriction or distortion of competition within the United Kingdom, except in relation to qualifying activities in a market for the provision of Solent crossing services affected by a disruption caused by a reason relating to coronavirus.

(3) The prohibition contained in Chapter I of the Competition Act 1998 is to be deemed never to have applied in relation to an agreement of the kind referred to in paragraph (1) which was made

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(2) Under section 59 of the Competition Act 1998 (interpretation) references in Part 1 of that Act to “agreement” are to be read with section 2(5) and (6) of the Act which provide that, unless the context otherwise requires, a provision of Part 1 of the Act which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, a decision by an association of undertakings or a concerted practice (but with any necessary modifications).

in the period beginning on 16th March 2020 and ending on the day before the day on which this Order comes into force.

#### **End of crossing disruption period**

5.—(1) If the Secretary of State considers that there is no longer a significant disruption or a threat of significant disruption to the operation of Solent maritime crossings caused by a reason relating to coronavirus, the Secretary of State must publish a notice to that effect specifying the date on which crossing disruption period is to end.

(2) The date specified in the notice given under paragraph (1) must not be less than 28 days after the date on which the notice is published.

(3) A notice under paragraph (1) is to be published in such a manner as the Secretary of State considers appropriate.

#### **Notification to the Secretary of State**

6.—(1) An agreement is notified to the Secretary of State in accordance with this paragraph if the following details of the agreement are given to the Secretary of State in writing within 14 days of the relevant date—

- (a) the names of the undertakings which are parties to the agreement;
- (b) a description of the nature of the agreement; and
- (c) the date the agreement was made.

(2) In paragraph (1) the “relevant date” means—

- (a) in the case of an agreement made before the coming into force of this Order, the date on which this Order comes into force;
- (b) in any other case, the date on which the agreement is made.

#### **Register of agreements**

7.—(1) The Secretary of State must compile and maintain a register of agreements notified under this Order.

(2) The register must be kept in such form as the Secretary of State considers appropriate.

(3) The Secretary of State must publish the register when it is first compiled and each time it is revised.

At 1.00 p.m. on 27th March 2020

*Paul Scully*  
Parliamentary Under Secretary of State  
Department for Business, Energy and Industrial  
Strategy

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

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order excludes from the Chapter I prohibition in the Competition Act 1998 agreements between those maritime operators providing passenger and freight crossing services across the Solent, intended to assist the operators in addressing the effects or likely effects of coronavirus on the provision of crossing services. The Chapter I prohibition precludes agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom. Where there are exceptional and compelling reasons of public policy for doing so, the Secretary of State may exclude an agreement or an agreement of a particular description from the Chapter I prohibition.

Article 3 of the Order specifies the activities to which an agreement must relate in order to qualify for an exclusion and article 4 sets out other requirements which an agreement must meet in order to qualify for exclusion.

Article 5 requires the Secretary of State to publish a notice if the Secretary of State considers that there is no longer a significant disruption or a threat of significant disruption to the provision of Solent maritime crossings as a result of coronavirus. The notice must specify the date on which the period during which the exclusions under this Order apply, is to end.

Articles 6 and 7 provide for agreements to be notified to the Secretary of State and for a register of the agreements to be compiled and published by the Secretary of State.

No impact assessment has been prepared for this Order.